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ABSTRACT

In an effort to contribute to the dialogue on the need for reform of the nation's fair housing laws and policies, this report describes and evaluates those policies and their impact. The report begins with a discussion of the Federal Government's support for a racially dual housing market prior to 1962 and moves on to describe the beginnings of a fair housing policy during 1962-1968. Next, the implementation of the 1968 laws, the Housing and Community Development Act of 1974, and fair housing enforcement from 1968 to 1980 and the impact of that policy are discussed. The second half of the report deals with fair housing policy under the Reagan Administration and covers the administration's efforts to curtail subsidized housing; block grant regulations; dilution of voluntary programs; efforts to reduce data collection; and retreat on Justice Department enforcement. Recommendations include: (1) new legislation to improve enforcement of the fair housing law; (2) executive action for fair housing; (3) reversal of policies reducing and restricting federal housing assistance to low- and moderate-income persons; and (4) a national bipartisan task force in the private sector to examine the causes of the low-income housing crisis, present and proposed federal programs, and recommendations for new programs. (CMG)

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A DECENT HOME . . .

A Report on the Continuing Failure of the Federal Government to Provide Equal Housing Opportunity

April 1983

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The Commission is indebted to Glenda G. Sloane for her work in writing this report. Mrs. Sloane is the Director for Housing and Community Development at the Center for National Policy Review, Catholic University Law School.

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Introduction

The purpose of this report is to contribute to the dialogue on the need for reform of the nation's fair housing laws and policies, by describing those laws and policies and evaluating how they are being implemented and the impact they have had.

To furnish a basis for gauging current policies and the need for reform, the report starts with a review of the historical role of the federal government in the housing market. The history includes the long period in which federal policy countenanced and reinforced racial discrimination by private industry and local officials, the past half century in which, through a variety of subsidy, tax and credit programs, the federal government has helped to sustain the housing market and shape the demography of the nation's cities, and the relatively brief experience of government efforts in the past two decades to promote equality of opportunity for all citizens.

Sharp differences of philosophy and political viewpoint affect the current consideration of changes in the federal role in fair housing. Proponents of strengthening fair housing laws attribute the limited success of the laws to the fact that the current statutory scheme is weak in its enforcement mechanisms and sanctions. Their prescription inevitably calls for more government regulation of the housing industry, a view at odds with the Reagan Administration's efforts to deregulate large segments of the economy. The Administration and its supporters in Congress also are seeking to bring an end to federal subsidies for people with incomes too low to permit them to compete for standard housing. Yet proponents of fair housing reform argue that without such subsidies, the promise of equal housing opportunity is meaningless to large numbers of people whose poverty and lack of housing choice stem in part from past government policies of discrimination.

This report is designed to provide information helpful in assessing these competing views and the need for reform.

Chapter 1

Federal Policy Pre-1962: Support for a Racially Dual Housing Market

Residential housing--sales and rental--is a product of a chain of negotiations involving builders, real estate brokers, appraisers, lenders and local governments. At any point, a decision made on the basis of the race, sex, color, religion or national origin by any actor in the chain can deny a unit to an otherwise qualified individual.

For those who cannot afford to rent or purchase a decent home, the federal government has been the major provider and has played a major part in determining where that housing would be located and who would occupy it.

Prior to 1962, there was no national policy favoring equal housing opportunity. For the most part, the disposition of property was dictated by local officials, elected and appointed, and influential members of the housing industry in accordance with accepted assumptions about race and property values, and race and creditworthiness. As black people migrated to urban areas in the early part of the 20th century, some jurisdictions adopted zoning laws prohibiting blacks and whites from purchasing, selling or occupying property in a manner that would destroy the "racial purity" of a given block or neighborhood.[1] Where jurisdictions did not adopt such prohibitions and as these ordinances were struck down as unconstitutional[2], they were replaced by racially restrictive covenants between buyers and sellers, contracts that were enforceable in court until 1948[3], and other operations of the private market that achieved the same results.

The principal actors in the housing industry adopted practices which assured a racially dual market for blacks and whites. "Responsible" real estate brokers would not show houses or apartments to persons of a race not presently living in the neighborhood. If a seller accepted an offer under such circumstances, the sale could still be blocked by other key actors. Lenders would often refuse to make the loan, appraisers would substantially undervalue the property or barriers could be posed by a restrictive covenant in the deed prohibiting the sale or occupancy of the property to a member of a racial or religious minority or by neighborhood anger at the proposed sale which was often made clear by overt action. Where violence occurred, law enforcement officers often failed to assist the victims of discrimination.

"Racial redlining" and "racial steering" maintained rigidly segregated neighborhoods in areas, particularly outside the South where the pattern was not as prevalent. The term "racial redlining" describes the practice of lenders who drew red lines to delineate areas of a city or town in which because of the racial composition they would not extend credit. Property insurers followed the same practice. Even where a neighborhood had not been redlined, an appraiser of the property who perceived it to be "unstable" or otherwise a poor risk because it was either all black, integrated or in transition fixed a value that reflected this perception. The result was an appraisal well below the agreed upon price. This, in turn, placed in jeopardy the value of all houses in that vicinity--further reinforcing the assumption that property values decline where neighborhoods become integrated.

Analogous to racial redlining, sellers of residential property did not show or give information to homeseekers in neighborhoods in which their race would be "incompatible" with the present residents. Homeseekers were "steered" into the appropriate parts of town.

An important factor in maintaining the dual market was the exclusion of minority real estate brokers from the white only trade association, the National Association of Realtors (NAR). From the local boards to the national board, blacks were effectively barred from operating in the market at large. The title "realtor" was a registered trade name so that only members of the NAR were entitled to use it. Local boards did not permit nonmembers access to multiple listing services or educational and other services. Black brokers organized their own trade association (the National Association of Real Estate Brokers, (NAREB) in an effort to provide the services and status important to conducting a real estate business. The significance of the NAR's exclusionary policy was noted by two Commissioners in a 1959 U. S. Civil Rights Commission report:

> ...[I]t would be helpful if all real estate boards admitted qualified Negroes to membership. In view of the important role real estate boards play in determining housing policies and patterns throughout a community, we believe these boards are not merely private associations but are clothed with the public interest and that the constitutional principle of nondiscrimination, applicable to all parts of our public life, should be followed.4/

Efforts by minority families to break out of the dual market in order to secure decent housing often were frustrated by other discriminatory practices. Real estate manipulators moved in to victimize both black and white homeowners and homeseekers. Brokers seized an opportunity to profit by promoting the initial sale in a white block to a black family and then representing to the neighborhood residents that black families were moving in and that it would be wise to sell immediately before the prices decline and the area becomes "undesirable." While minorities sometimes gained access to decent housing, these techniques of "blockbusting" and inducing "panic selling" also assured perpetuation of segregated neighborhoods.

A black paid a high price for this housing. Because conventional financing was not available, particularly to the first families who bought in the white block, other arrangements were negotiated. A typical device was a land contract--a loan that carried high (sometimes usurious) interest rates, with balloon payments and no accumulation of equity.5/ When the families could not meet such onerous terms, they would lose the property and their investment, and brokers would again profit by the turnover.

This pattern of racial exclusion and exploitation was the prevailing condition in the 1930s when the federal government entered the housing arena to prevent the housing industry from collapse and to protect the investments of homeowners. From the outset, federal policy adopted the assumptions of local governments and the housing industry about the desirability of a racially dual market and endorsed prevailing practices used to exclude and segregate minorities.

Only one program, public housing, explicitly recognized a right of participation by minorities and then only on a segregated basis. In fact, the Act was not primarily viewed as a housing statute, but was seen as another necessary measure for general relief. The thrust of the Act was for "the reduction of unemployment and the stimulation of business activity" 6/ to ameliorate the emergency brought about by the economic collapse.7/ Under the federal public housing program initially enacted in 1937, local housing agencies (LHAs) were required to provide units to low-income minorities according to a formula based on their proportion to all low-income families in the LHA's jurisdiction.8/ It was understood, however, that their housing accommodations would be separate. Other federal housing programs inaugurated in the 30's--federal mortgage insurance (Federal Housing Administration [FHA])9/, the Federal Home Loan Bank Board (FHLBB) System 10/ and the Federal National Mortgage Association (FNMA) 11/, all designed to safeguard and facilitate homeownership--had no similar provision or even reference to the disadvantages blacks faced in securing decent housing.

The federal endorsement of local customs and practices of exclusion and separation was boldly expressed in a series of manuals issued by the FHA to guide underwriters in issuing federal insurance. The manuals warned about the dangers to property values of allowing minority entry into neighborhoods and provided a detailed blueprint for preventing such entry. The first manual, issued in 1935 to implement the 1934 law that established the federal mortgage insurance program, stated:

> Important among adverse influences... are the following: Infiltration of inharmonious racial or nationality groups...
>
> All mortgages on properties in neighborhoods protected against the occurrence or development of unfavorable influences, to the extent that such protection is possible, will obtain a high rating of this feature. The absence of protective measures will result in a low rating or, possibly, in rejection of the case.12/ (Emphasis added).

The 1936 FHA Underwriters' Manual specified techniques for avoiding such "infiltration":

> Deed restrictions are apt to prove more effective than a zoning ordinance in providing protection from adverse influences. Where the same deed restrictions apply over a broad area and where these restrictions relate to types of structures, use to which improvements may be put, and racial occupancy, a favorable condition is apt to exist. (Emphasis added).13/

Further, the FHA 1936 manual recognized the critical role that public schools could play in determining the racial and ethnic characteristics of a neighborhood:

> The social class of the parents of children at the school will in many instances have a vital bearing. Thus, although physical surroundings of a neighborhood area may be favorable and conducive to enjoyable, pleasant living in its locations, if the children of people living in such an area are compelled to attend school where the majority or a goodly number of the pupils represent a far lower level of society or incompatible racial element, the neighborhood under consideration will prove far less stable and desirable than if this condition did not exist.14/ (Emphasis added).

To guard against the dangers that the "purity" of an area might be diluted by the schools, the FHA had a solution--transportation of children to maintain race and class segregation:

> In such an instance it might well be that for the payment of a fee, children of this area could attend another school with pupils of their same social class. The question for the Valuator to determine is the effect created by the necessity for making this payment upon the occupants of the location. Under any conditions the rating could not be as favorable as if the desirable school were available without additional costs. In many instances where a school has earned a prestige through the class of pupils attending, it will be found that such prestige will be a vital element in maintaining the desirability of the entire area comprising the school district.15/

To further guarantee these results the manual prescribed that:

> Recorded deed restrictions should strengthen and supplement zoning ordinances and to be really effective should include the provisions listed below. The restrictions should be recorded with the deed and should

> run for a period of at least 20 years. Recommended restrictions include the following:
>
> * * * * *
>
> (G) Prohibition of the occupancy of properties except by the race for which they are intended.
>
> (H) Appropriate provisions for enforcement.16/

The 1938 manual advised the underwriter to examine the location to determine whether natural barriers might be effective in forestalling the incursion of adverse influences:

> Natural or artifically established barriers will prove effective in protecting a neighborhood and the location within it from adverse influences. Usually the protection from adverse influences afforded by these means includes prevention of the infiltration of business and industrial users, lower class occupancy, and inharmonious groups.
>
> Areas surrounding a location are investigated to determine whether incompatible racial and social groups are present, for the purpose of making a prediction regarding the probability of the location being invaded by such groups. If a neighborhood is to retain stabiility, it is necessary the properties shall continue to be occupied by the same social and racial classes. A change in social or racial occupancy generally contributes to instability and a decline in values. (Emphasis added).17/

Thus, the framework established by the federal government in the 1930s for the preservation and expansion of the housing market (a framework which remains largely intact today) was governed by an explicit endorsement of racism. The theories articulated in FHA manuals and other policy statements led to the rigid separation of blacks and whites in public housing, to the exclusion of minorities from white neighborhoods assisted by federal funds and to refusals to provide mortgage assistance in minority neighborhoods.

Federal policy did not change with the onset of World War II when the increased migration of blacks from the South to the cities of the Northeast, Midwest and West expanded the black ghettos. Severe housing conditions and overcrowding were exacerbated by a general shortage of housing as the nation's resources were concentrated on the war effort.

Before the war ended, Congress acted to provide veterans "all that a grateful nation can furnish them in the way of compensation for the sacrifices and offerings which they have made."18/ Popularly known as the G.I. Bill of Rights 19/, its primary aim was to give returning veterans hospitalization and education benefits, but included as well a guaranty and loan program to enable veterans to purchase and rehabilitate homes and farms.20/

After the war, the federal government became the prime mover in aiding the housing industry to meet the pent-up demand for new homes. The Housing Act of 1949 set a national housing objective for the first time: "the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family."21/ By insuring home mortgages for middle-income buyers 22/ and guaranteeing mortgages for veterans 23/, the federal government underwrote the development of large subdivisions of single family homes in areas outside the central cities, areas that previously were sparsely populated and lacked water and sewer systems, roads and schools.24/ Other federal assistance brought the roads and the infrastructure. But federal policy did not seek to assure that minorities would have a share in the new housing boom or its benefits, much less that housing subsidized by federal funds would be available without discrimination.[25/] While overt endorsements of the use of discriminatory techniques such as racially restrictive covenants disappeared from FHA manuals after the Supreme Court's 1948 Shelley v. Kraemer opinion ruling such covenants unenforceable, the federal government did not challenge racial practices in housing. Meanwhile, the segregative and exclusionary practices of the real estate industry remained unchanged and received the imprimatur of many state laws, such as a 1946 Michigan statute which wrote into law a code of ethics stating that realtors should not introduce into a neighborhood "members of any race or nationality...whose presence will clearly be detrimental to property values."[26/]

As a result, when the Federal HOusing Administration (FHA) conducted a survey in the late 50s, it found that less than 2% of the housing built after the war under the FHA mortgage insurance program was sold to minorities and that one percent was housing built in all minority subdivisions.[27/]

The growth of new residential communities with their new employment centers made possible by federal funds adversely affected the older central cities. The departure of the white middle class and jobs meant losses of revenues to the cities. The movement of employers to the suburbs placed the jobs beyond the reach of many inner city residents.[28/] While the new communities needed funds to establish facilities and services to serve their growing populations, the older cities were in dire need of funds to maintain and upgrade an aging infrastructure for declining and less affluent populations. Further, there was little cooperation among the several jurisdictions that surrounded the city to deal with the new conditions, although each was affected by problems in furnishing such services as roads, hospitals, airports and industrial centers. Instead, self-interest precipitated a competition among the jursidictions to attract those they perceived would add to the tax base and be compatible residents. With or without a conscious racial intent, the desire of local governments to maximize resources and minimize the need for services led to the creation of homogeneous communities, largely white and middle class--a suburban band around an increasingly poor and minority-populated center city.

The inequities between city and suburb were acknowledged by few. In the late 50s, a few cities and states attempted to deal with persistent racial discrimination and the growing role of government in subsidizing it. The first state and local laws prohibiting discrimination in housing adopted in the 1950s applied only to public housing, that is, housing provided through direct federal funding.[29/] The federal government remained silent, and continued to support the establishment of white enclaves in the suburbs through FHA and Veterans Administration (VA) programs, and segregated and increasingly minority-occupied public housing in the central cities.

In public housing, the federal government provided no incentives for the burgeoning suburban communities to establish their own local housing authorities and state laws limited the territory in which existing LHAs were permitted to operate.[30/] Even where an LHA had authority to operate outside the jurisdiction, it was easy enough for communities to exclude public housing entirely. The federal law required that a cooperation agreement be executed between the local governing body and the local housing authority to enable a project to go forward.[31] With few exceptions, communities decided not to be burdened with poor people and minorities and simply refrained from entering into agreements. Local veto power effectively kept low rent public housing out of the suburbs and concentrated in the central cities where it was increasingly minority and isolated in areas of low-income and minority concentration.

Intended to aid central cities, the Urban Renewal Program, enacted in 1949 and amended in 1954 to assist in the elimination of slums and blight, helped to revitalize some areas but severely dislocated minority families who lived in the path of local development.[32] Directives to local agencies to assist these families in finding new housing were largely ignored.[33] For minorities whose choice was severely restricted to certain areas, equal access was crucial if they were to secure decent, affordable housing. Lacking fair housing requirements, the program operated to push displaced minorities into overcrowded substandard, segregated neighborhoods, often creating more slums and blights. Urban renewal earned the title "Negro Removal."[34]

Federal policy in support of segregation in public housing and discrimination in FHA and VA programs persisted after the 1948 Supreme Court decision Shelley v. Kraemer [35], outlawing the enforcement of racially restrictive covenants and the 1954 Brown decision, which made clear the unconstitutionality of "separate but equal" public facilities.[36] In the late 1950s when some state and local fair housing laws were extended to cover housing with FHA mortgage insurance and VA guarantees, FHA and VA agreed to cooperate with state and local agencies by not doing business with any developer found to have violated that law. The measure of the federal commitment is found in the failure of the government to suspend or bar even one builder or developer from participating in the FHA or VA programs.[37/]

Finally, after officially mandated segregated public housing was challenged successfully as a violation of the Fourteenth Amendment in suits brought following the Brown decision [38/], the Public Housing Administration (PHA) repealed its policy of neutrality that permitted support of segregated projects but left the problem of implementing the judicial decision to the local agencies, maintaining that tenant selection was not a federal responsibility.[39/]

At the same time that the suburbs were developing as white and middle class, the cities remained a patchwork of black and white neighborhoods. As white families moved from homes adjacent to black neighborhoods, the overcrowded ghetto would expand in that direction, a move often made possible by real estate brokers who engaged in "blockbusting." Often desperate for adequate housing, minority families agreed to pay prices above market value often on terms and conditions that were outrageous, if not illegal.[40/] Because FHA and VA, consistent with accepted market practices, would not insure mortgages on houses in neighborhoods that were "socially inharmonious", minorities were denied the benefits of the low or no down payment mortgage loans that lenders made when federal insurance was available.[41/] FHA and VA would routinely refuse to consider applications from integrated and minority neighborhoods--thereby redlining large areas of the city.[42/]

Minorities were fair game for unscrupulous real estate speculators in large part because the homeownership assistance afforded by the federal government to hundreds of thousands of white families was unavailable to them.

To maintain these homes usually required an income beyond their capability; as a result the residents could not keep their houses in repair and neighborhoods began to decline. Others could not meet onerous debt service and lost their houses to foreclosure. In many cases minorities purchased homes under land contracts which provided no accumulation of equity or other protection until the loans were fully paid. Failure to make a payment meant eviction and a total loss. With the tacit support of the federal government, discrimination and segregation in housing continued through the decade of the 50's.

In 1959, the U. S. Commission on Civil Rights issued its first report to the President and the Congress. One third of that report described in detail the history of federal complicity in perpetuating housing discrimination and segregation. The report recommended:

> That the President issue an Executive order stating the constitutional objective of equal opportunity in housing, directing all Federal agencies to shape their policies and practices to make the maximum contribution to the achievement of this goal, and requesting the Commission on Civil Rights...to continue to study and appraise the policies of Federal housing agencies, to prepare and propose plans to bring about the end of discrimination in all federally assisted housing...

> That the Administrator of the Housing and Home Finance Agency give high priority to the problem of gearing the policies and the operations of his constituent housing agencies to the attainment of equal opportunity in housing.[43]

Chapter 2

Federal Policy, 1962-68: Beginnings of a Fair Housing Policy

In the presidential campaign of 1960, when federally-subsidized discrimination in housing emerged as an issue, candidate John F. Kennedy stated that, if elected, he would issue such an executive order to eliminate this injustice with "a stroke of the pen."[44]

Two weeks after his inauguration, President Kennedy met with members of the Civil Rights Commission and assured them that he would issue an Executive Order on equal housing opportunity. But other considerations intruded, including an Administrative effort to pass a housing subsidy bill that required support from Southern Congressmen and the need to obtain Senate confirmation of the appointment of Robert Weaver as the first black person to head the Housing and Home Finance Agency.[45] (He later became the first black Cabinet member as Secretary of the Department of Housing and Urban Development [HUD]). Such political factors led the President to delay his stroke of the pen for almost two years from the date of his promise. On November 20, 1962, Executive Order 11063 on Equal Opportunity in Housing was signed by the President.[46] The first expression of a national policy on equal housing opportunity, the Executive Order was a limited document, narrowly constructed to cover only federally-assisted housing contracted for after the date of the Order. The federal financial regulatory agencies that supervise a substantial number of mortgage lenders were eliminated from coverage at the last moment.

The Order prohibited discrimination in projects agreed to after November 20, 1962 and called for the abandonment of discrimination in federally-assisted housing that originated prior to that date.[47/] Severe sanctions were made available where violations were found.[48/] Recipients could be cut off from funding; housing developers and realtors could be barred from future participation in federal housing programs should they violate the proscription against discrimination.[49/] In addition to the programs administered by the Housing and Home Finance Administration (predecessor to the Department of Housing and Urban Development), the Veterans Administration and Farmers Home Administration programs were covered.

But the Order was inherently defective and soon the inadequacy became apparent. The absence of sanctions against discrimination in federally-assisted housing contracted for before the date of the Order in combination with failure to include mortgage lenders supervised by the financial regulatory agencies resulted in a prohibition against discrimination which applied to less than one percent of the then-existing housing inventory and 15% of new construction.[50/] Efforts to secure voluntary non-discrimination policy commitments from members of the industry were unsuccessful. The perception of those who marketed housing--sales or rentals--was that adopting such a policy would place them at a competitive disadvantage. The only way to achieve the fair housing objective was to subject everyone to the same standard. Based on this experience, the President's Committee on

Equal Opportunity in Housing (established by the Order) asked President Johnson in its annual reports of 1964 and 1965 to extend the Order to include lending institutions supervised by the federal financial agencies. No action was taken by the President.[51/]

Over the course of four years, only a few builders or developers were barred from participating in the FHA or VA program [52/] and the Urban Renewal Administration required a covenant running with the land to bar discrimination in all sales of property negotiated through a locality's urban renewal program.[53/] But the patterns of segregation built up over the years remained largely unaltered.

The limited effectiveness of the Order is not wholly attributable to its restricted terms. Implementation was in the hands of the agencies that administered the housing programs. They shared an identity of interest with regulatees. Thus, when, under the Executive Order, complaints of discrimination were submitted, they were viewed by many federal officials from the perspective of the housing industry. Complaints were commonly treated as interfering with the operation of the program, and therefore to be disposed of as quickly as possible and with as little disruption to processing applications and disbursing funds. Neither the President's Committee nor any other body had authority over the agencies. For several reasons, this structure discouraged civil rights enforcement. Because the primary responsibility of the housing agencies was the achievement of the programs' objectives, e.g., to build public housing, insure or guarantee home mortgages, and not to enforce equal opportunity objectives, considerations of discrimination received little attention. Equal opportunity requirements were viewed as obstacles to the efficient and timely execution of the agencies' mission.

In addition, the ongoing relationship between the federal agency and the persons or organizations with which it routinely did business did not include the homeseekers or the public housing tenant. Federal housing personnel dealt only with the mortgage lender, the builder or the local housing and urban renewal agencies, i.e., the providers and not the consumers of the federal benefits. They were the people the area office staff knew, understood and trusted. Some federal officials had received training in the housing industry and some viewed the industry as a source of future job opportunity.

A third structural weakness was the separation of the small corps of equal opportunity staff from the operation of the program and the failure to give this staff any authority or significant role in program decisions that directly affected the elimination of discrimination from the operation of the program. The final decisions were made by the program officials and as a result discriminatory policies continued in effect despite advice and counsel from equal opportunity officers.

In retrospect, it is clear that the Executive Order did not result in concrete progress in opening up the market to minorities or eliminating segregation in public housing. Its importance lies principally in the fact that for the first time the guarantees of the Constitution against government discrimination in housing were buttressed by a policy statement by the Executive branch.

As an incremental step it helped dispel the conventional wisdom that the federal government could not exercise regulatory power to eliminate racism in a highly competitive entrepreneurial area. Although there are precedents for executive action to eliminate discrimination, those orders were issued under extraordinary conditions or limited in application. For example, in June of 1941, Presidnet Roosevelt pursuant to his authority as Commander-in-Chief promulgated Executive Order 8802 "Reaffirming Policy on Full Participation in the Defense Program by all Persons, regardless of Race, Creed, Color or National Origin, and Directing Certain Action in Furtherance of Said Policy.[54] In 1948, President Truman ordered desegregation of the Armed Services.[55] Both these executive actions are noteworthy as exceptions to the historic use of regulatory authority in support of discrimination and segregation.

The Executive Order also serves as an example of the limitations of voluntary efforts unaccompanied by legal standards and requirements as the remedy for discrimination. The Order covered and provided enforcement authority only for federally-assisted housing. As noted above, it applied therefore to less than 15 percent of all new residential construction in the country. Existing housing that changed hands also was unaffected by the Order unless repossessed by FHA or VA through mortgage foreclosure. With 85% of the nation's housing under no federal constraints against discrimination, the President's Committee attempted to persuade the housing industry trade associations and individual lenders, builders and brokers to adopt nondiscrimination policies. The Committee was unsuccessful.

In fact, many responded that a law was needed that covered all housing before members of the industry would take any action. In their view, voluntary action by a few created an inequitable burden and would afford little benefit to those seeking equal access. Experience under other voluntary programs, e.q., Plans For Progress, a 1960's program to open up employment opportunities, further demonstrated the limits of voluntary action and the need for legislation prohibiting discrimination.

In 1964 Congress added its voice with enactment of Title VI of the Civil Rights Act.[56] Not a fair housing law, it nonetheless did bar discrimination in federally-funded activities including housing.[57] While assistance given by way of contracts of insurance or guarantee was expressly excepted from coverage, the Executive Order continued in force and covered FHA and VA programs.[58]

While the legislature joined the Executive in barring discrimination in federal subsidized housing programs, the vast portion of the private market remained untouched, particularly as FHA's share of the market continued to decline to a point where it accounted for less than fifteen percent of new construction.[59] At the same time, new programs were introduced to increase the supply of housing for low and moderate-incomd persons and the Executive Order and Title VI were major steps in assuring disadvantaged minorities access to these units.

The President's Committee continued to seek an extension of the Order to include more of the private market. In 1965 President

Johnson decided that housing discrimination was so invidious and pervasive that legislation was required to root it out of the market place.[60/] The House of Representatives passed a far-reaching fair housing law the following year [61/], but a filibuster prevented it from coming to a vote in the Senate.[62/]

Of course, the moves to eliminate housing discrimination were not carried on in a vacuum. In addition to school desegregation and voting rights initiatives, the 1964 Act prohibited discrimination in employment [63/] and in public accommodations.[64/] While it was clear that where people lived had a direct impact on where their children attended school and where they could work, there was a reluctance to tackle housing discrimination. The reluctance was based in part on indecisiveness about the appropriate federal role in securing fair treatment for all people in the housing market. The constitutional amendments adopted after the Civil War had established a federal responsibility to redress discrimination in governmental functions such as voting and public education, an obligation being assumed belatedly in the 1960s.[65/] In reaching discrimination in private employment, Congress was able to identify federal interests in removing impediments to national productivity and the defense capability of the country. In housing, however, legislators, backed by the influential lobbying of the housing industry, argued that a prohibition against discrimination would intrude on rights of private property and personal choice. This view was held tenaciously despite the federal government's long record of nonneutrality in racial discrimination and its growing role since the 1930s in shaping the racial demography of city and suburbs.

The enactment of Title VI and the promulgation of the Executive Order made only a small impact on the operation of federally-assisted programs. The inmigration of blacks to cities and the outmigration of whites had meant that an increasing proportion of those eligible for public housing were minority families. Local political pressures continued to result in the confinement of public housing projects to neighborhoods that were already largely minority and low-income. Under Title VI regulations that addressed the dual problems of tenant and site selection, the federal government continued to defer to LHAs methods for complying with the prohibition against discrimination. One approved or permitted method was a freedom of choice plan for tenants, and a site selection process that favored sites having "the greatest acceptability to eligible applicants regardless of race, color, religion or national origin."[66/] Finally, in 1967 the PHA announced that this formulation was unacceptable and significantly modified the regulations.[67/]

Most segments of the housing industry receiving assistance from FHA and VA continued doing business as usual. And, of course, private non-federally assisted housing was not yet subject to any federal directive.

Title VI was not left solely to interpretation by the Executive Branch. In 1966, six black tenants or applicants for public housing in the City of Chicago filed a lawsuit against the City, the Chicago Housing Authority (CHA) and HUD alleging the establishment and maintenance of a racially discriminatory public housing system. The proceedings on the complaint against HUD were stayed until the disposition of the CHA case. After a finding of liability against the CHA in 1969[68/], the courts considered and found that HUD had violated the Fifth Amendment of the Constitution and §601 of Title VI "by knowingly sanctioning and assisting CHA's racially discriminatory public housing program."[69/]

While the longevity of the case, 1966 to 1980 including consideration by the U. S. Supreme Court, may distinguish it, the finding of HUD liability under Title VI and the remedy applied to CHA and HUD were ground breaking. HUD was not permitted to justify its acquiescence to CHA's illegal activity by claiming deference to local discretion. With respect to CHA, the court's order was limited to activities within the CHA's jurisdiction. It directed the CHA to build its next 700 family units in predominantly white areas of Chicago and thereafter at least 75% in such areas or in Cook County. Was HUD's activity to be restricted as well to boundaries coterminous with the CHA's jurisdiction? The Supreme Court said "no." "Here the wrong committed by HUD confined the respondents to segregated public housing. The relevant geographic area for purposes of the respondents' housing options is the Chicago housing market, not the Chicago city limits."[70/] The

Court did not require a metropolitan area order, but held that the District Court has the authority to direct HUD to take remedial action by dealing with private developers outside the city limits. On remand, an agreement was entered into to enable public housing tenants and those on the waiting list to secure housing throughout the Chicago Metropolitan Area.[71]

Chapter 3

1968-80: The Emergence of a Federal Fair Housing Policy

Three major developments in 1968 changed the status quo dramatically.

In April, responding to the grief and anger engendered by the assassination of Martin Luther King, Congress swept aside its lingering doubts and enacted Title VIII of the Civil Rights Act of 1968, a broad prohibition against discrimination in private and public housing.[72/] The Act established an Assistant Secretary for Equal Opportunity a position not found in any other department.

In June, the Supreme Court, in Jones v. Mayer,[73/] reexamined the reach of the Reconstruction Civil Rights Act of 1866[74/] and concluded that it was broad enough to provide black citizens with redress against private as well as government discrimination in housing transactions.[75/]

In August, Congress passed a Housing and

Urban Development Act authorizing new housing programs for low and moderate-income families that promised volume and choice of location.[76] Local governmental approval was not required for the construction of federally-funded housing as it had been in the predecessor programs, thereby removing a major obstacle to expanding housing opportunity for lower-income families including minorities beyond city slums.

This confluence of actions had potential both for eliminating discrimination against minority families who could afford housing in the private market and for creating decent housing in a choice of locations for lower-income minority families.

Title VIII established the national objective of fair housing and provided some of the mechanisms essential for achieving that goal. It created a right of private action for victims of discrimination as defined under the law[77] and gave the Attorney General authority to institute litigation where there was a pattern or practice of discrimination.[78] A third road for seeking relief was provided through the Department of Housing and Urban Development (HUD).[79] The statute, however, merely authorized HUD to receive, investigate and conciliate complaints of housing discrimination.[80] The failure to provide an administrative enforcement mechanism proved to be a serious flaw in the Act since the expense and delay involved in court litigation has deterred many victims of discrimination from taking that route.

With respect to federally-assisted housing and urban-related programs, Title VIII directed the Secretary and "all executive departments and agencies [to] administer their programs and activities...in a manner affirmatively to further the purposes of this title..."[81] Thus, the law expressly required government agencies to do more than prohibit discrimination in the operation of their programs. Title VI regulations in effect at the time Title VIII was enacted already required recipients to act affirmatively to undo the effects of past discrimination, but their application to so small a portion of the housing market could not have great impact.[82]

The entrenched patterns of segregation and discrimination in the housing market now seemed susceptible to reform provided that decent housing at reasonable cost could be made available (through new construction and rehabilitation) to those families too poor to find units in the private market.

This condition, which would make the new Title VIII useful to low-income minority families, was addressed in the Housing and Urban Development Act of 1968. The Act set targets for addressing the housing needs of the nation, including the needs of low and moderate-income families. Until 1968, the public housing program was the major provider of housing for low-income families. From its inception in 1937 to the enactment of the new housing programs in 1968, little more than one million units had been built. (Private industry produced more than this number in a single year). Recognizing the extent of the unmet need, Congress set a ten-year goal of 26 million units, six million of which were to be new and rehabilitated units produced with public assistance.[83] The mechanisms for meeting these needs included not only subsidized rents (§236) [84], but an innovative program to make homeownership a reality for lower-income families by subsidizing the interest payments on home mortgages (§235).[85] To remove obstacles to the dispersal of housing opportunities, the Act permitted federal assistance to go directly to the private market without the veto power that local governments exercised under prior programs by refusing to give approval or enter into cooperation agreements.

Implementation of the 1968 Laws

In the early years, the Housing and Urban Development Act fulfilled some of its promise. Although the pace for reaching the ambitious goals set was later slowed the $235 and $236 programs did generate an annual rate of 600,000 new or rehabilitated units over a four year period. This was more than half the number produced by all subsidized programs over the preceding thirty year period.

Other goals of the program proved more intractable. Although local approval was no longer required, public officials devised other methods to exclude unwanted housing or unwanted people. Resistance to subsidized housing was vocal in middle class city neighborhoods and in suburban communities. Local governments applied zoning ordinances, building permit procedures and other land and building controls to fend off would-be developers of §235 and §236 projects. Although discriminatory, often blatantly so, the actions went largely unchallenged by either Justice or HUD.

Government inaction on fair housing was evident in the time it took HUD to issue any regulations to implement Title VIII. While the complex regulations governing the new subsidized housing programs were published within two months of passage of the Act four years elapsed before a few, limited fair housing regulations were adopted in 1972.[87]

In other words, where subsidies to the housing industry were at stake, HUD was able to gear up and develop rules, handbooks, forms, applications and manuals setting forth operating procedures for its own staff and applicants (including private developers and local public agencies) on such complex matters as housing costs, market rents and tenant eligibility. But, in dealing with its regulatory responsibility to prevent discrimination, the agency could take no steps to interpret the provisions of Title VIII for its own staff, the industry or the public.

The fair housing rules that were adopted applied only to housing projects provided with federal assistance, the same class covered by the Executive Order--although Title VIII covered most of the private market in 1972. HUD required developers to formulate an affirmative fair housing marketing plan to attract that segment of the population least likely to apply for their housing.[88/]

The plan encouraged the use of advertising and community contracts to reach the targeted population, promoted the employment of minority salesmen and women and required the applicants to set goals for occupancy by the targeted class. As units were sold or rented, the developer was required to submit reports on the race of the occupants.

Applicants for participation in all FHA mortgage insurance and assistance programs had to secure approval of their plans in order to qualify for federal benefits. Projects subject to affirmative marketing requirements including those serving low and middle-income persons. It was evident from the outset that even well-intentioned developers did not have the necessary knowledge or understanding to either devise or implement such plans. In fact, most developers had operated for years on the assumption that the goal was a homogeneous development. Obviously guidance, if not reeducation on techniques for attracting a racially diverse clientele, was required. HUD provided little assistance and often approved plans that were uninformed and nonresponsive. (For example, the applicant was asked to "state what results [he/she] reasonably expects in terms of occupancy from special outreach efforts." A not uncommon response was "full occupancy."[89/]) Racial occupancy reports were most often not submitted and most HUD offices did not press the matter. Nor did HUD monitor the developers' implementation of their plans, for example by checking newspapers to determine whether proposed advertising actually appeared. Little incentive was provided for developers to improve or implement their marketing plans should the goal appear elusive.

The other facet of the rules dealt with the location of the projects. It gave priority to projects that demonstrated improved living environments for lower-income persons generally, and that were located near employment centers, public transportation and schools.[90] Locations that promoted desegregated housing patterns were given high priority.[91] This last criterion became the subject of intense controversy. In response to the proposal, many expressed the belief that the rule would prevent the construction or rehabilitation of low-income housing in areas of racial concentration. When the rule was made final, HUD stated that it "is designed to assure that building in minority areas goes forward only after there truly exist housing opportunities for minorities elsewhere."[92] To assure that these were not mere token opportunities elsewhere, the rule specified that they be "sufficient" and "comparable."[93]

The rules on affirmative marketing and site selection were intended to be complementary. Site selection was to encourage the location of housing for low and moderate-income families in predominantly white areas and affirmative marketing was to conduct outreach programs to inform minorities of these new opportunities. (Conversely, developers in locations in integrated or minority areas were to market to white low and moderate-income families). Middle-income subdivisions (which were not subject to the site selection criteria), were to achieve open occupancy through affirmative marketing.

The results were not encouraging. In white suburban areas, assisted projects that were permitted to go forward were largely occupied by white residents--elderly people and working class families. (Resistance to subsidized housing continued in many suburban communities). Sales in subdivisions containing a significant number of single-family homes were largely unaffected by the new rules. Minorities who received subsidies were generally confined to housing opportunities in the inner city--many of them in existing housing units rather than new projects.[94/] And it was in the sale of existing housing that corrupt and fraudulent practices most frequently occurred. Real estate speculators would make cosmetic improvements in dilapidated units and sell them to minority families unable to meet basic credit standards. When maintenance costs or other factors led to default, foreclosures occurred without any counseling or assistance to the family. FHA officials nodded at and sometimes participated in the fraud.[95/] Later, some would cite experience with the existing housing program as proof that homeownership for low-income people was unfeasible.

A parallel development affecting the opportunity for minorities to reside in areas outside central cities was Congres sional action to encourage areawide planning. Cooperation among local jurisdictions that made up the Standard Metropolitan Statistical Areas (SMSAs) had been initiated in 1954 when Congress made funds available to areawide planning bodies consisting of representatives from most of the local jurisdictions.[96/] For the next two decades, additional legislation providing incentives and conditions continued to strengthen and broaden the scope of activities and institutionalize cooperation among the jurisdictions. Although consideration of the distribution of housing for low and moderate-income families is of recent origin, in several metropolitan regions areawide agencies succeeded in securing commitments from their members to provide such housing in accordance with a "fair share" formula.[97] Unfortunately, minority opportunities to live in the units provided under the agreements did not often follow.

To a large extent, the failure to expand housing opportunities was attributable to the failure of the federal government to regulate and to enforce the civil rights requirements applicable to both recipients of federal assistance and to the private market. As the implications of the 1968 laws were recognized and suburban resistance mounted, leadership at the highest levels of the federal government wavered. In a 1971 statement on federal housing policy, President Nixon said:

> [w]hether rightly or wrongly, as they view the social conditions of urban slum life many residents of the outlying areas are fearful that moving large numbers of persons--of whatever race--from the slums to their communities would bring a contagion of crime, violence, drugs, and the other conditions from which so many of those who are trapped in the slums themselves want to escape.[98]

While Mr. Nixon did not embrace these fears as his own, neither did he exercise leadership to counter them. Federal authority, he said, was "quite properly" limited "with respect to the essentially local choices involved in local community planning..." It would be a "violation of the law," he said to employ "Federal coercion or Federal money" to force integration.[99]

In 1973 the momentum in production of §236 units came to an abrupt halt when President Nixon declared a moratorium on the programs and the most promising resource for increasing the supply of decent housing for low and moderate-income persons throughout metropolitan areas thus was terminated.[100]

The Housing and Community Development Act of 1974

In 1974 Congress, in enacting the HCD Act, took a major step in revamping the categorical programs administered by HUD.[101] While loosening controls previously exerted by the federal government over the expenditure of funds for housing and community development purposes, the primary objective of the new law was to benefit low and moderate-income persons. It also extended the reach of fair housing requirements. Communities were given far more discretion in determining how to meet their needs, but they were required to meet basic equal opportunity ground rules.

Prior to the 1974 Act, applicant jurisdictions selected from an array of programs those they perceived best calculated to benefit their communities. But they were required to compete for these funds and to meet strict and detailed program requirements. Congress, however, did not require that the needs of the disadvantaged or minorities be met for jurisdictions to receive funds for parks, sewers or recreation centers or other community needs. Federal funds were obtainable by affluent communities to benefit affluent residents. Most often those communities effectively barred minorities from living there. Few had adopted laws or taken other steps to prohibit discrimination in the sale or rental of housing. Title VI had a "pinpoint" provision which permitted sanctions only with respect to the funded program in which discrimination was proved.[102] For example, if discrimination in a federally-assisted housing project was established, funding for a sewer system serving that project would be approved in that the sewer system would serve all in the project regardless of race.

The 1974 Housing and Community Development Act eliminated the categorical programs in favor of a block grant approach.[103] Communities applied for a sum, based on a legislated formula, for specific activities which they described in detail, including the type and location of the activity and the beneficiaries. Applicants had to demonstrate that the funds would be used principally to benefit lower-income persons. Included as part of the application was a Housing Assistance Plan (HAP) that set forth the housing conditions, needs and goals of the community. Needs and goals were identified by family size and tenure.[104] In addition, the needs of special segments of the population, i.e., racial minorities and handicapped people, had to be identified with precision.[105]

Of particular pertinence to equal housing opportunity was the statutory requirement that the HAP include an estimate of lower-income persons "expected-to-reside" in the community as a result of the growth of employment opportunities.[106] As noted, beginning in the 1950s, corporations and industries began moving out of central cities into suburbs and exurbs, leaving behind those employees unable to find housing they could afford nearby. Conditioning block grants on the applicant's willingness and capacity to provide housing to meet this need was viewed as an important step in bringing together job opportunities and those who needed them most, particularly minorities and women.

As early as the mid-1960's federal civil rights agencies noted that the location and relocation by employers to suburban locations which did not prohibit discrimination in housing or did not have housing affordable by low and moderate-income families or were inaccessible for lack of public transportation obstructed compliance with the Equal Employment Opportunity Law.[107/]

The President's Committee on Equal Opportunity in Housing and the U.S. Commission on Civil Rights concentrated on the federal government as a major employer that was relocating to areas that were inaccessible to lower-income employees. The President's Committee worked with several agencies to assure job security to minority employees of agencies located or planning to relocate outside the District. One step was the designation of a housing officer to assist employees to find housing near their jobs.[108/] In 1970 the Civil Rights Commission documented these problems and the efforts to deal with them.[109/]

The problem persisted after the enactment of the Fair Housing law in 1968. The Equal Employment Opportunity Commission began to consider methods for dealing with the relocation of private companies in areas where there was inadequate or no affordable housing for low and moderate-income employees. A 1971 memorandum prepared by the

Office of General Counsel concluded that "a corporate relocation or proposed relocation to a suburban area where minority workers do not reside constitutes a violation of Title VII unless the corporation has taken steps to assure equal employment opportunity.[110] It then suggested what these steps might be, including the provision of "housing arrangements."[111]

While the HCD Act was concerned directly with the problem as addressed by the EEOC counsel, it provided the link that would produce, if implemented, low cost housing near employment opportunities.

Further, under the 1974 Act applicants were required to delineate the general locations that were suitable for low-income families and to develop a fair housing strategy to assure that these units and the entire housing market would be accessible to minorities without discrimination.[112] The site selection standards continued to apply to specific project applications. Part of the strategy had to be designed as well to promote desegregation. It took several years to accumulate a body of experience on how best to implement these provisions. By 1980, however, communities were aware that housing activities would be subject to some degree of oversight and sanctions if necessary. (Section 109 of the HCD Act prohibits discrimination and §111 permits cutting off funds, reducing funds or conditioning funds on correcting deficiencies).[113] Applicants for community development funds that had not met their goals to house low-income families were warned by HUD that they must begin to correct the shortfall.[114]

The failure of jurisdictions surrounding cities with substantial minority populations to take steps to house low-income families was merely a continuation of past exclusionary practices and policies. Thus, HUD's insistence on meeting family housing goals was an essential factor in expanding opportunities for lower-income minorities to live outside central city ghettos.

Even where housing is provided, however, enforcement of the fair housing laws through the application of site selection and tenant selection standards and marketing outreach are required to assure that the housing will be available in fact.

Fair Housing Enforcement, 1968-80

If the burden of eliminating discrimination from the housing market was not to fall on individual victims, federal action that would result in institutional changes in the way brokers, lenders and developers operate was vital. In addition, such action had to take into account the role of local governments which, through the exercise of land use authority, were a major agent in controlling the production, cost and location of housing in their communities. Clearly, many localities had used this power to keep minorities from moving in.

HUD's principal role under the law was to utilize its authority to investigate complaints, institute procedures to carry out the mandate to carry out its programs in a manner to affirmatively further fair housing, conduct studies and surveys, assist local fair housing agencies, influence members of the housing industry and refer significant cases of pattern or practices to the Justice Department. Basic to HUD's fulfilling its responsibility to administer Title VIII was an interpretation, through rulemaking, of the provisions of the law: What acts constitute a violation, who may sue, who may be sued, what is the standard of proof for establishing a violation? Interpretive regulations or guidelines were needed for the use of HUD staff, judges, injured persons, the housing industry, attorneys and state and local fair housing agencies.

The issuance of such interpretive rules and guidelines in the 1960s by the Department of Health, Education and Welfare (HEW) had proved a crucial factor in securing progress in school desegregation under the 1964 Civil Rights Act.[115/] Similarly, guidelines issued by the Equal Employment Opportunity Commission (EEOC) defining the elements of discrimination and addressing difficult issues such as the use of tests as qualifications for employment, had brought advances in job opportunities for minorities and women in the 1970s.[116/] While courts remained the ultimate interpreters of the law, they relied heavily on the expertise of federal agencies to assist in such interpretations.[117/] HUD, however, did not follow the lead provided by federal agencies in other areas and a critical opportunity for progress was lost.

Another weakness in HUD's enforcement in the private sector arose under the Title VIII provision that directs HUD to identify state and local laws that are substantially equivalent to the federal law.[118/] Once recognized, HUD refers complaints from those jurisdictions to the agencies charged with administering the laws.

For the most part, few state and local agencies were adequately funded or staffed to deal with those complaints in timely fashion. As a result, complaints languished in the agencies until in some cases HUD sent its own personnel to relieve the backlog. In fair housing cases, the impact of delay on the victim is particularly severe, since he may lose irretrievably the opportunity to obtain the home or apartment from which discrimination had barred him. Moreover, delay may curtail the possibility of legal redress. Under Title VIII, the 180 day statute of limitations has been deemed by some courts to apply from the date of the alleged discriminatory act, regardless of the timely filing of the complaint with HUD.[119] Thus, a complainant who waits for HUD or state agency action may be barred from seeking judicial relief.[120]

Another instrumentality HUD has used to carry out Title VIII is an office for voluntary compliance charged with seeking agreements from the industry to promote the fair housing objective. The best known agreements were consummated with the National Association of Realtors and the National Home Builders.[121] In turn, a number of local realtor and builder member organizations entered into separate agreements to follow through on those of their national organizations.

While the agreements ratified the change in basic policy of the housing industry, few commitments were made and fewer concrete actions were taken to actually open up housing opportunity. The agreements, for example, called for fair housing posters designed by HUD for display in realtors' offices, model homes and apartments, etc., and educational programs designed to explain the law. In return, realtors and builders who were subject to the Affirmative Fair Housing Marketing regulation and signed an agreement were relieved of their obligation to formulate and implement an Affirmative Fair Housing Marketing Plan (AFHMP)--the heart of HUD's Title VIII fair housing program. The trade-off clearly advantaged the industry, which had opposed and continued to oppose this type of regulation. Those who filed AFHMPs found that neither the plans nor their implementation were subject to close HUD scrutiny. Thus, the development of white subdivisions and multifamily rental projects continued largely undisturbed.[122/]

The Justice Department's early strategy under Title VIII was to bring as many cases in as many geographical areas as possible to convince those in the business of providing housing that the law was going to be vigorously enforced. Cases were filed attacking patterns and practices involving blockbusting, steering and discriminatory rental policies. Three hundred cases, an average of 32 cases a year, were filed between 1969 and 1978.[123/] In three cases, the Justice Department challenged municipal government's use of its zoning and other authority to block housing that was to be open to minority as well as white families.[124/] Justice also succeeded in persuading the courts that the standard for judging violations of Title VIII was not whether an act was racially motivated but whether without a compelling reason it disadvantaged a racial group. The issues were the subject of private litigation as well which resulted in a substantial number of favorable decisions.[125/]

Unfortunately, success in court did not always result in the building of housing. Such opportunities were lost in a lengthy litigation process that resulted in higher construction costs and the loss of the federal subsidy commitment. Nonetheless, important precedents were established, including the obligation of defendants who are found in violation of Title VIII to take affirmative steps to undo the effects of their past discriminatory practice.[126/] Outreach to the minority community through advertising media and local community groups, employment of minority rental agents, reporting progress or lack of it to the Justice Department and cooperating with fair housing organizations to promote choice were among the steps ordered.

In the late 1970s the Justice Department decided to give greater priority to cases challenging restrictive land use practices that prevented minorities from residing in communities or certain parts of communities. The Department recognized that most zoning laws were adopted initially to control the use of land and had no racial content. However, as the methods by which communities successfully excluded minorities were declared illegal or otherwise neutralized, zoning restrictions were utilized to effect the same end. Typically, a builder applied for a variance that would downgrade land from minimum one or more acreage requirements in order to permit the construction of multifamily low-cost housing. When it became known that the project was to be federally funded and subject to federal equal access requirements, the request for variance was rejected. The shift to a strategy of challenging such zoning actions under Title VIII was prompted by a belief these suits would have a greater impact, if successful, than suits against many small operators in the private market.[127] In addition the Civil Rights Division sought to line up enforcement programs designed to end segregated housing with those designed to end segregated public schools.[128] Because the location and occupancy of subsidized housing as determined by local governments often has a segregative effect on schools, Justice evolved an innovative schools/housing strategy that would establish liability on the part of the local government for housing segregation and lay the foundation for a remedy that would include provisions for housing action consonant with the school desegregation plan. Such a combined approach, the Department reasoned, would ultimately decrease the need for school busing, as housing became more integrated.

Several recent studies demonstrate this interrelationship. It is commonly understood that housing segregation results in segregated neighborhood schools. What is not commonly understood is that where schools are racially identifiable as black or white they tend to be used to steer prospective homeseekers to choose housing so that neighborhood and school segregation are perpetuated. Further, there is now growing evidence that large scale school desegregation is followed by significant reductions in housing segregation.

This effect first shows up as reduced levels of white enrollment loss.[129] In a study which compared pairs of cities with and without metropolitan school desegregation, those cities that had desegregation had experienced roughly twice as much housing desegregation over the decade of the twenties as their counterparts.[130]

In the many cases where the Justice Department does not bring a lawsuit, victims of discrimination are free to retain private lawyers to file a case. But private actions have not made major inroads on the marketplace or provided large numbers of individuals with relief for discriminatory housing practices. Although attorneys' fees are available where the litigant cannot "financially assume" those costs himself, the fact that the lengthy litigation process often prevents victims from gaining the house or apartment of their choice and that damage awards with some exceptions have been limited has deterred many from undertaking the ordeal of litigation.[131]

In the cases that have been brought under Title VIII, the courts have given a liberal interpretation to the law. Beginning in 1972, the Supreme Court defined broadly the interests at stake in preventing housing discrimination, holding for example that white apartment residents who were not directly injured had standing to challenge a discriminatory rental policy because it denied them the benefits of interracial association.[132/] Other examples of generous judicial treatment of Title VIII are the inclusion of discriminatory practices not expressly prohibited by the Act but which make housing unavailable because of race.[133/] Examples include racial redlining of neighborhoods [134/] and land use ordinances that prevent minorities from residing in communities.[135/]

An important and divisive issue that arises under Title VIII is whether the plaintiff must show a discriminatory intent or purpose to prove a violation. While the Supreme Court has not decided this issue, a number of Courts of Appeals have applied some version of an "effects" test in determining the existence of violation of Title VIII.[136/] The use of an effects test permits successful challenges to housing practices that adversely affect minorities if they are not essential to meet a business need. Plaintiffs need not meet the difficult, sometimes insurmountable burden of proving that the harmful practices were prompted by racial animus .

The limited impact of these decisions is attributable to the defects of private litigation noted above and to the fact that the Justice Department can only bring pattern and practice cases and has limited resources to prosecute a large number of these necessarily complex cases.[137] In addition, HUD has no authority under Title VIII to order or otherwise secure remedies and most injured persons do not even consider HUD a useful alternative.

After a decade of experience under the fair housing law, two conclusions seemed warranted: 1) those responsible for administering the law had not fully utilized their authority to eliminate discrimination and 2) the law itself had serious deficiencies that needed correction through legislative amendment.

In 1979, the Carter Administration voiced support for amendments to the fair housing law which would have added the needed administrative enforcement mechanism, extended coverage to the handicapped and made other technical improvements in Title VIII.[138]

The major elements of the bill included: the creation of an administrative forum designed to be more expeditious and less costly than litigation, with administrative law judges deciding discrimination complaints when conciliation fails; authorization for a court proceeding to hold a house or apartment off the market while the discrimination claim is being decided; extension of the statute of limitations from 180 days to two years; extension of the availability of attorneys' fee awards to all victims of discrimination; and extension of the protection of Title VIII to people who are discriminated against because of a handicap.

The bill passed the House of Representatives,[139] but ultimately failed in the Senate in December, 1980 when its proponents fell five votes short of the needed 60 to end a filibuster mounted by Senators who opposed some of the reforms and wanted to change Title VIII to require proof of intent, rather than the current effects test.[140]

In December also, the Carter Administration belatedly sent to Congress a comprehensive set of Title VIII regulations designed to improve enforcement of the law. But the days of the Carter Administration were numbered and the regulation did not become final.

Summary

While several important initiatives, e.g., litigative efforts to attack land use barriers, legislative efforts to strengthen the fair housing laws, were undertaken in the Carter Administration, the last half of the 70s, like the first half, was marked by an uncertain federal thrust and wavering political leadership.

As a candidate in 1976, Jimmy Carter had said:

> I have nothing against a community... trying to maintain the ethnic purity of their neighborhood.[141]

He spoke of "black intrusion" into white areas and the bad effects of housing "a diametrically opposite kind of family" in a settled community. Candidate Carter later apologized for his use of the "ethnic purity" phrase (which echoed the 1930s language of FHA manuals) and promised to enforce federal law, adding however, that he would not "arbitrarily use Federal force to change neighborhood patterns."[142]

As President, Mr. Carter devoted little attention to the issue and his 1978 urban policy statement, "A New Partnership to Conserve America's Communities", made little reference to any need to secure access by urban minorities to jobs, housing and public services in the suburbs.[143] Meanwhile, some advocates of low-income housing, frustrated by the delays caused by suburban resistance in securing integrated housing, called for more housing in the inner city, even at the cost of reinforcing segregation.
were also voiced privately that if housing opportunities for minorities and low-income families were dispersed, the political base of minority elected officials would be diluted and eroded. And the housing industry, led by the politically powerful National Association of Realtors (NAR), threw millions of dollars into the effort to prevent any significant strengthening of fair housing laws.

In this political atmosphere, it is not surprising that the trumpet call of 1968--the Supreme Court's Jones v. Mayer decision and the two landmark housing laws (Title VIII and the HCD Act)--had faded by 1980. The major elements of contemporary federal policy, decent housing and equal housing opportunity for all remained in place, but the steps taken to implement this policy did not come close to matching the work the federal government had previously done in constructing a segregated society.

The Impact of Fair Housing Policy, 1968-80

Studies of earlier decades documented the stubborn persistence of segregated housing patterns in American cities. With the adoption of national fair housing policies in 1968, however, many had hopes that the 70s would tell a different story. But the first analyses of the 1980 Census suggest a less sanguine prospect. Using the standard measure of segregation, the index of dissimilarity, which ranges from zero (no segregation) to one hundred (maximum segregation), one recent study found that most of the cities of Michigan had changed little during the decade.[144/]

In the first nationwide in-depth study of racial patterns in housing demographer Karl Taeuber of the University of Wisconsin confirms the Michigan findings for cities across the country. Taking the twenty-eight cities with at least 100,000 blacks, he calculated the index of dissimilarity, on a block to block basis, for 1970 and 1980.[145/] He found that the average decline from 87 in 1970 to 81 in 1980, or about six points. If that rate holds in the eighties and beyond, it will take half a century to eliminate half the segregation in these cities. Examination of the list of cities, moreover, makes it apparent that there is not a simple correlation between either the size of the black population nor the percent black, and the level of segregation. For example, two cities with majority black populations, Atlanta (67%) and Gary (71%) have very different patterns of residential segregation, with indices of 86 and 68, respectively.

Averages, however, mask imporatnt differences; eight of these cities declined more than ten points, including five cities which were all above 90 at the beginning of the decade. These five were all located in the South and all have experienced school desegregation for most or all of the decade. In contrast the seven cities that experienced declines in the index of two or fewer points have either had no or only token desegregation, or began desegregating their schools at the very end of the decade.

The increased numbers of blacks moving to the suburbs, particularly in the late 70's, is often cited as evidence that housing barriers are breaking down. But closer examination suggests important qualifications to this seemingly encouraging trend. Whites continue to move to the suburbs at higher rates than blacks, and the numbers of blacks making suburban moves is less significant than one might expect on this basis of their income and other determining characteristics. Moreover, the suburban destinations of most blacks are "spillover" communities (suburban locations just over the city line from predominantly black central city areas), historically black communities (mini-ghettos) and/or older suburbs that tend, demographically and economically, to more closely resemble the central city than the traditional suburbs. While many of these neighborhoods are racially mixed when the black families choose them, they do not remain so, for almost all white suburban movers choose white areas. The end result is the continued perpetuation of neighborhoods differentiated by race. As pointed out by demographer Reynolds Farley, the suburbanization of blacks is better described as residential deconcentration than desegregation.

During the last two decades, the income gap between black and white families has been closing, particularly for two-income black families. But these economic gains have not brought with them comparable gains in minority suburbanization or homeownership.

Economics does not significantly explain the persistence of the residential segregation gap. In 1965, 52% of nonwhite families who were poor nevertheless lived in poverty areas while only 10% of nonpoor whites lived in such areas.[146/] More recently, demographer Farley has reported that if blacks had been able to exercise choice to the same extent as whites and the only factor limiting residential location for blacks was income, the proportion of black families in suburbs would be much higher than it actually is. He noted that if blacks retained their present incomes but were represented in suburbs to the same extent as whites at each income level, 43% of all black families in the New York City metropolitan area would live in suburbs instead of the 17% who actually did live there in 1970. For Chicago, the proportion of blacks "expected" to reside in suburbs on the basis of their income was 46% while the actual percentage was 8. In other cities, the gap is of similar proportions.[147/] The 1980 Census data show very little change in these proportions evidencing the persistence of discrimination in the housing market.[148/]

Nor is residential segregation explained by private choice, since blacks consistently have expressed a choice for housing in integrated areas. Having eliminated economics and self-segregation as substantial explanations, social scientists have concluded that continuing high levels of segregation are attributable mainly to continuing high levels of discrimination.[149]

The persistence of practices of discrimination, mostly subtle but effective, was documented in a HUD study of housing market practices conducted in 1977.[150] This study, which sampled the behavior of housing agents in forty American cities, found that the chance of a black person encountering discrimination on one visit to a real estate agent was 15% and for rental agents was 21%; if one visited a series of four agents, as many people do in the course of a housing search, the odds of being discriminated against increased to 50% and 75%, respectively. (Note that this is at best a conservative estimate, for it does not incorporate any information on racial steering of homeseekers). Similarly, a replication of the HUD study for Chicanos in the Southwest found that they faced discrimination on the basis both of ethnicity and skin color.[151] Later studies in several cities carried out by fair housing centers found that these practices have continued into the 80s in places such as Boston and Grand Rapids.[152] In some cases, discrimination that has traditionally been on the basis of race and ethnicity is being supplemented or supplanted in the rental market by discrimination against families with children.

Chapter 4

Fair Housing Policy in the Reagan Administration

When the Reagan Administration took office in January, 1981 the fair housing issues continued to be: 1) measures for improving enforcement in the private market; and 2) decent housing in better living environments for the economically disadvantaged, particularly minority and female-headed households. Conditions, however, were worsening. Housing production had reached its lowest point since 1946 and the pressures to reduce deficits in the federal budget led to drastic cuts in the federally-subsidized housing programs. The Administration's policies on both these housing issues so crucial to minorities and women were made clear early.

The first action the Administration took with respect to fair housing was to recall the Title VIII regulations that had been submitted to Congress by the Carter Administration.[153/] The proposed rule constituted the first comprehensive interpretation of Title VIII, covering the private market as well as federally-assisted housing and including definitions of what constitutes discrimination and who may sue and be sued. In pulling the proposed rule back, HUD gave assurances that it would resubmit a proposed rule after it had an opportunity to review it.[154] But two years later, no rule had been proposed.

The Administration's Effort to Curtail Subsidized Housing

In June, 1981 the President appointed a Commission on Housing to study and make recommendations on the role of the federal government in the housing market.[155] The membership of the Commission and the final report reflected the political philosophy of the Administration, and helped to guide its subsequent actions. The need for deregulation of the housing industry, including local and state governmental activities, and the reduction of the federal presence were the principal premises upon which the Commission based its analyses and recommendations. The validity of the Commission's assumption that deregulation and the federal departure from the housing scene will make for a healthy housing market rests on a series of questionable premises.

The first premise of the report was that the entire explanation of the housing problem of the poor lies in insufficient income.[156] That is, the Commission believed that the existing supply of housing that is habitable is adequate to meet the needs of the poor if they could afford to rent the units. This assumption, however, is contradicted in the Commission's own factual account of the housing crisis for lower-income families.

In both the categories of physically inadequate housing and the payment of a disproportionate amount of income to rent, very low-income families fare the worst. Twenty percent of very low-income renters live in inadequate housing and more than half of all very low-income renters living in adequate housing pay more than thirty percent of their income for rent. The incidence for minority families, particularly blacks, is higher than for non-minority households.[157/]

The reliance on existing housing stock to meet the above needs once the gap between income and rent is bridged is questioned again in the Commission's own report. While nationally, the adequacy of housing has improved in the past decade, significant concentrations of substandard housing are found disproportionately in rural areas of the South and in older large cities such as New York, Newark, Miami and Washington, D. C. These also are areas of high minority and low-income concentrations.[158/]

In many of the large population centers with a large proportion of substandard housing, vacancy rates are very low. At the time this report was published, the national rental vacancy rate was 5%; the homeowner vacancy rate, 1.5%. In some cities the rental vacancy rate was lower: Atlanta, 3.5; Los Angeles/Orange County, 1.8; Seattle, 4.4.[159/] In areas marked by large proportions of subsidized housing, low vacancy rates and large numbers of low-income and minority families, it is doubtful that policies which do not address housing supply will work.

As recently as March 1, 1983 Secretary Pierce continued to maintain that "in most communities the major housing problem of the poor is housing affordability, not housing availability. Good quality housing, housing on which only minor repairs are necessary, is widely available, but it costs too much to be affordable to the poor."[160/]

Another underlying premise that does not survive scrutiny contends that when the private market produces new housing for middle-income families the units they vacate will be available to other families including those of lesser income.[161/] This "trickle down" theory has not operated in the past to fulfill that promise. Most lower-income families have not been able to afford the vacated units. For minorities, the continued operation of a racially dual housing market has meant that even where they can afford the units being vacated, the areas in which the housing is located quickly became racially segregated and marked by declining services.

These questionable premises provided the support of the Administration's policies for meeting the housing needs of low-income people.

The Administration's housing budget drastically reduces funds to assist low and moderate-income families. According to one analyst, the net reduction in subsidized units from 1980-1984 will be 95%. These cuts come at a time when an increasing number of families cannot afford decent housing in the private market without some form of governmental assistance. HUD estimates that more than 18 million families in this country need assistance of some kind.[162/] The competition for decent housing affects persons substantially above median income levels. In 1979 only 15% of white households and 10% of black households could afford the median priced new house. Median priced existing housing was affordable for fewer than one-third of black families compared to one-half of white families.[163/]

Another measure of housing inadequacy is the proportion of income spent for shelter. In 1980, a family with an income below

$3,000 per year which paid the median rent of $179 per month was allocating 72% of its income for shelter. There were 2.7 million renters households in this category, 29% were black, 8% Hispanic and 27% female-headed.[164]

The federal government has provided 4.5 million units over more than four decades to house poor families: 3.4 million through HUD and 1.1 million through the Farmers Home Administration.[165] Nonetheless, fewer than one-quarter of families below the poverty level are living in federally-assisted housing. Further, contrary to widely held assumptions, 80% of assisted housing is white occupied.[166]

The federal government has supported to a far greater extent homeownership for middle and above-income families who are permitted to deduct from income taxes, mortgage interest and tax costs. In fiscal year 1983, this benefit amounted to $36 billion, a tax subsidy that exceeded by almost five times the HUD budget for housing assistance.[167]

The proposed cut in housing assistance and the shift to the use of existing housing ignores current housing conditions and human needs.

Because the problem was viewed solely as one of affordability, the Commission recommended that assistance should be solely in the form of payments to enable poor families to pay a reasonable portion of their income for rent in either housing they occupy or can secure.[168] The Administration has incorporated such a voucher system in its 1984 budget as a replacement for all programs providing funding for new construction and substantial rehabilitation, except for 10,000 units for the elderly.[169]

The voucher policy does not take into account that for minorities and female-headed households, the shortage of decent housing in their communities is compounded by continued discrimination in the housing market.[170] In fact, experience under existing housing programs and under an extensive test of the voucher program has demonstrated that

> [m]obility was not increased by the allowance payment. The housing allowances appear to have had little if any impact on the extent of income and racial segregation, on the length of the journey to work, on neighborhood quality, or on movement between the central city and suburb.[171]

Such payments rarely have resulted in change in the housing conditions of low-income minority families.[172] They have continued to occupy the same or similar units in racially segregated neighborhoods, while whites not faced with practices of discrimination often have used their payments to relocate in better areas.[173]

In direct contradiction of these findings, the Secretary of HUD testified that: "Certificates allow families to choose where they want to live rather than forcing them into certain buildings... [F]amilies have used certificates to move to less segregated neghborhoods."[174]

Where new units are necessary to house the poor, the Commission and the Administration recommended that the Housing and Community Development Act be amended to permit funding of new construction through community development money.[175] The act currently prohibits recipient governments from using funds for construction of new housing units.[176] The Administration does not propose, however, that Community Development Black Grant (CDBG) funds be increased to cover this expensive undertaking and there are no substantial alternative sources of funding in the offing.

Even in areas where the existing housing supply is adequate, the Administration proposes a funding level that would neither reach a large number of the needy nor provide assistance in an amount that would enable the recipient to secure decent housing with thirty percent of its income. A 1982 Senate Committee Report on the Administration's proposal pointed out its concern that "the payment standard tentatively proposed by HUD will be so low that recipients will, in fact, have no option but to pay more than the program envisages.[177] The budget proposal would permit recipients to spend whatever portion of their income they choose toward rent. Inasmuch as there is no upper limit on the rent that an owner could charge to be eligible to participate as there is under present programs, the tenant share therefore could be substantial depending on the market conditions.

The impact on fair housing policy of the Administration's proposed reliance on a voucher system as the sole means of meeting the housing needs of low-income people is profound. If the Administration's recommendations are accepted by Congress, large numbers of minority citizens will remain for the foreseeable future in substandard housing in racially isolated areas. Lacking access to the housing market, they will be beyond the reach of even strong fair housing enforcement.

The Administration's Block Grant Regulations: Eliminating Protections for the Poor and Minorities

As noted previously, the 1974 Housing and Community Development Act made far-reaching changes in the system for distributing federal assistance. While allowing localities more discretion than they had under categorical programs to determine how to spend funds, the Act also established ground rules to assure that poor people and minorites would reap some of the benefits of the program. Now the Reagan Administration is in the process of discarding those ground rules.

On October 4, 1982 HUD proposed major changes in the regulations implementing the Housing and Community Development Act.[178] The expressed intent of Congress in the 1974 Act was that funds disbursed under the Act principally benefit lower-income persons, establish viable urban communities, reduce the isolation of low-income and minority persons and support areawide cooperation among local jurisdictions. In 1981, Congress amended the Act to reduce the paperwork and regulatory burdens on applicant communities.[179] HUD now has taken the 1981 amendments beyond the expressed purpose of Congress. First, it avers that Congress no longer intends that the primary objective of activities funded under the Act is to principally benefit low and moderate-income persons.[180] If this interpretation were to be accepted, communities would be free to divert scarce funds from poor neighborhoods, many of which are racially isolated, to meet "urgent needs" or the "prevention of slums or blight" as defined by the locality.[181] Grantees would not be required to certify that the expenditure of funds for these purposes will benefit to any degree the disadvantaged in their community.

The proposed rule also would eliminate certifications now required that the recipient will comply with civil rights laws and Executive Orders on equal housing and employment opportunity, on training and employment of lower-income residents and compliance with the nondiscrimination provision of the Housing and Community Development Act itself.[182]

HUD argues further that the Uniform Relocation ACT (URA) does not apply to displacement caused by Housing and Community Development (HCD) activities and proposes to drop the requirement of a certification that the housing needs of dislocated persons will be met.[183] While displacement may not be a major problem in all communities, in many large cities in which neighborhoods are being revitalized minorities are being displaced from their homes and neighborhoods. At the least, protections afforded under the Relocation Act have provided resources to locate and secure decent alternative housing.

Other certification requirements would also be dropped or altered. Significantly, the existing certification language for

Title VIII requires the applicant to certify that it "will take action to affirmatively further fair housing in the sale or rental of housing, the funding of housing and the provision of brokerage services."[184] Under this certification, applicants developed fair housing strategies for the entire housing market. Early in 1983, without the authority of a rule change, HUD eliminated the language from the certification and contract, although Secretary Pierce observed on March 1st, that housing provided with federal assistance and subject site selection criteria and affirmative marketing requirements "mirrors the racial composition of surrounding neighborhoods."[185]

The provisions in existing regulations that required area-wide cooperation and provided incentives for such cooperation also would be deleted. The estimate of persons expected-to-reside in a community would be left to the sole determination of the grantee.[186] There would no longer be any mechanism such as the OMB's A-95 process for reviewing community development activities for consistency with activities planned or taking place in neighboring jurisdictions.[187] The incentive for local jurisdictions to agree on a share of low-income housing to provide mobility particularly for minorities would be reduced, if not ended.

Under the Small Cities regulations, HUD has abdicated its civil rights responsibilities to the states that now or soon will administer the program.[188] States may select recipients of HCD funds without any directives or guidelines on the civil rights protections guaranteed by law. HUD is very likely to take similar action under the entitlement program leaving grantees free to interpret and apply the civil rights requirements as they choose.

In short, in the name of paperwork reduction and deregulation, HUD has initiated a series of changes that are sweeping in scale. Although enforcement was limited, the policies adopted in the 1960s and 70s at least provided a framework for regional cooperation in meeting housing needs and some assurance that federal funds would promote housing choice and respond to the needs of the poor. In seeking to dismantle this framework, the Reagan Administration would repeal a critical element of national fair housing policy.

The New Jersey Supreme Court in January of this year issued a decision expressing anger and impatience at the failure of a large number of New Jersey communities to take steps to provide or facilitate the provision of housing for low and moderate-income families living in their metropolitan areas.[189] The Court found that these exclusionary practices were prevalent throughout the State and not unique. Neither is New Jersey unique in this regard. Incentives and support from the federal government would promote regional cooperation: withdrawal may well erase the progress made to date.

Title VIII Compliance: The Administrations' Dilution of Voluntary Programs

In the Reagan Administration, voluntarism is the centerpiece of HUD's equal opportunity effort. As a complement to effective enforcement, voluntary action could no doubt be a useful means for eliminating discrimination in the market. Unfortunately, HUD does not have sufficient authority, nor has it been sufficiently aggressive in using the authority it has, to establish credibility with those it would enlist in the cause of equal housing opportunity.

Any hope that the voluntary program would be an instrument of progress seems to have ended with regressive changes made by HUD in September, 1981 in a Voluntary Affirmative Marketing Agreement (VAMA) entered into between HUD and the National Association of Realtors in 1975. [190/]

First, the amended agreement bars the publication of the names of realtor signatories, even to HUD.[191/] Second, any member of the Community Housing Resources Board (CHRB) (the body organized and funded by HUD to implement the agreement) who is a "party to litigation or complaints alleging violation of the Federal Fair

Housing Law or Realtors Code of Ethics must withdraw from the Board.[192] This provision will clearly have an adverse impact on fair housing and civil rights representatives who, under the terms of the agreement, are to be appointed to the Board. There is no qualification that the complaint be related to current business before the CHRB, nor is there automatic reinstatement once the matter is resolved. Third, the CHRB is prohibited from sponsoring, conducting or funding programs of real estate testing.[193] for measuring the extent of discrimination is an important tool in any fair housing program, as the Supreme Court implicitly recognized in holding that testers have standing to sue under Title VIII.[194]

In short, the tone of the amended agreement is one of suspicion and hostility to fair housing activities and persons and organizations engaged in them. As amended, the agreement amounts to little more than an acknowledgement by the real estate industry that a fair housing law exists. Yet HUD is allocating two million dollars out of a total of $5.7 million available for fair housing enforcement to implement the agreement.[195] To cap these events, the National Association of Realtors has directed its members not to be participating members of the CHRBs.[196] From the outset, there is established an adversary relationship between the CHRB and the industry it is intended to aid in promoting the fair housing objective.

Fair Housing Enforcement: The Effort to Reduce Data Collection

Adequate enforcement of Titles VI and VIII and Executive Order 11063 depends on the collection of data on the race and sex of beneficiaries. Unless agencies administering programs have information on the race and sex of persons receiving benefits, they cannot identify or verify discriminatory practices or patterns.

The Paperwork Reduction Act[197/] and regulatory reform initiatives have been invoked to cut back or threaten the elimination of the systems for collecting racial and sex data now in place. As the expiration dates for recording this essential data occur or approach, OMB has directed the agencies to reevaluate these forms to determine if they are necessary.

Concern for cost, efficiency, the elimination of duplication and reducing the burden on private and governmental entities did not begin with the present Administration. The effort of the federal government to achieve these objectives dates back to World War II[198/] and the duplication of forms that businesses, particularly small businesses, were inundated with as part of wartime regulation. The current review of agencies' regulatory and reporting requirements covers all programs and activities. With respect to civil rights, however, data collection is rarely built into the agency program. Equal opportunity standards and monitoring are imposed by authority of other statutes, Executive Orders and regulations and implemented by staff unconnected with the agency office administering the program. As a result, agencies believe they can scale down or omit forms or items dealing with race and sex and not undermine the operation of the program. Because civil rights monitoring and enforcement is not the responsibility of those who administer the programs, they feel no stake in retaining these forms. In fact, traditionally, program staff has considered the application of the civil rights laws and equal opportunity standards to be an obstacle to carrying out their responsibilities. Within OMB there is an Office of Civil Rights that is not routinely advised or consulted when civil rights issues such as data collection are before the Agency.

The uncertainties of data collection have plagued the housing area for years. The form for recording racial occupancy in public housing expired approximately three years ago. This information was not gathered by HUD for three years. A new form has now been approved by OMB [199], and the data will be collected for all subsidized housing.

The latest challenge to the necessity of racial and sex data collection is to the systems adopted by the federal agencies that supervise mortgage lending institutions. As the result of a law suit alleging that these agencies were covered by the fair housing law's mandate to administer their programs in an affirmative manner, they agreed to institute monitoring and enforcement mechanisms to assure compliance.[200]

The agencies adopted systems that had the common objective to identify and eliminate discriminatory mortgage lending practices and policies of their member institutions. After a period of implementation the Federal Home Loan Bank Board proposed changes in April, 1982 eliminating items of information important to Title VIII enforcement.[201] The Federal Deposit Insurance Corporation in June, 1982 proposed to "streamline" its application process by making substantial changes in submissions previously required to implement the Community Reinvestment Act.[202] Neither took final action after receiving a sizeable negative reaction to both proposals. Further, the time was not propitious in that Congress had requested the Federal Financial Institutions Examination Council (FFIEC)[203] to look into the feasibility and desirability of establishing a unified system for: enforcing the fair lending laws and regulations; satisfying the public disclosure purposes of the Home Mortgage Disclosure Act;[204] and implementation of the Community Reinvestment Act.[205] The report was due and delivered to Congress in September 1982. The public has been given sixty-day period to comment on the report prepared by a private consultant. The agencies have suspended action on changes in their systems, the expiration of the forms for recording data has been extended. The pressure to cut back on paperwork and to deregulate continues and may result in permitting the existing systems to lapse or be cut back.

What is at stake in the current controversy over data collection in the banking agencies is the ability of the federal government to exercise a check on discriminatory practices by lending institutions. If federal agencies terminate the collection of information, racial redlining, discriminatory denials of credit and other practices that deny minorities and women access to the housing market may again go undetected.

The Administration's Retreat on Justice Department Enforcement

Enforcement of the fair housing law is primarily the responsibility of the Justice Department. Because HUD has no enforcement authority under Title VIII the burden rests on Justice to develop investigations and cases that will have the greatest impact on eliminating housing discrimination and achieving the national fair housing objective.

The threshold question facing each new Administration is, given limited resources and the extent and variations of housing discrimination across the country, what litigation strategies by the Department of Justice will prove most effective? Since 1968 the Justice Department has followed a variety of approaches in attacking housing discrimination.

As described earlier, the initial strategy adopted after the enactment of Title VIII in 1968 was to institute lawsuits in as many areas of the country as possible to make clear that the government intended to enforce the law. The first cases dealt with familiar practices of racial steering,[206/] blockbusting [207/] and overt refusals to sell or rent because of race. These cases helped set important precedents through judicial interpretations of the scope and coverage of Title VIII and of the kinds of proof that would support the finding of a violation. The precedents were particularly important since HUD furnished no guidance on the application of Title VIII.

Although this Justice activity sent signals out to the housing industry, it made only limited inroads in the dual market. The strategy was reexamined over the years to deal with more subtle but equally invidious discriminatory practices such as racial redlining in mortgage lending[209] and property insurance.[210] The Department also reexamined the effectiveness of the relief and remedies it had requested and secured in successful cases, and perhaps most important, reexamined the institutions and entities that had been sued. As a result, new suits were brought to clarify what discriminatory acts were prohibited and adding to the list of entities that could be held liable under the statute. Establishing the right to sue local governmental bodies that prevented the construction of housing projects for low and moderate-income families because of the projected race of the occupants was important because of the potential for eliminating from entire communities devices by which they effectively excluded minorities.

The Carter Administration expanded on this base of litigation experience and undertook new challenges to local governmental practices and the development of litigation that combined the issues of school and housing segregation. The Justice Department achieved some success with this approach, for example in a court order requiring the City of Parma, Ohio to redress exclusionary actions by seeking additional subsidized housing for low and moderate-income families.[211] But the Carter Administration left office before most of its initiatives could bear fruit.

The Reagan Administration has reversed direction. Its course has not been articulated but it has become clear that it stresses neither volume nor the selection of major cases that will have wide impact.

The sharp drop in the number of cases filed is dramatic evidence of retrogression. In contrast with the 20 to 32 cases filed each year up to 1981, only three suits have been filed in the past two years. Of the three, two were against the owners of apartment buildings in two cities and both have been settled. The settlement agreements do not impose penalties or significant obligations on the defendants when compared to agreements secured in earlier cases.[212/] The third complaint, filed in January of this year, is against the City of Cicero, an incorporated community adjoining the City of Chicago. The town became known when Martin Luther King, Jr. led a fair housing march through its center and was confronted by hostile and violent white residents. The suit alleges "systemic violations" of Title VIII.[213/] While the Cicero case deals with blatantly racist practices, none of the three suits has broad impact or is likely to set important precedents in the development of the fair housing law.

In response to criticisms of the Department's fair housing efforts, W. Bradford Reynolds, the Assistant Attorney General for Civil Rights, issued a report intended to explain the reduction in litigation.[214/] He maintained that the fairer measure of the Civil Rights Division commitment to equal housing opportunities is the number of investigations undertaken--59 are being conducted.[215/] Delays in bringing actions he attributed to a reorganization which shifted fair housing cases from U. S. attorneys to the division which has had to start the investigations anew.

In 1981, Mr. Reynolds also announced that the Department would no longer institute actions against exclusionary zoning on similar land use practices with discriminatory effects.[216] Later, he denied the charge that he was abandoning exclusionary zoning litigation, but acknowledged that the Civil Rights Division would focus on other areas of fair housing enforcement. Based on information concerning current investigations, it appears that discrimination in the sale, rental and financing of housing on a case-by-case basis has priority.[217]

In addition, the Department has apparently rejected the housing/school desegregation approach adopted by the Civil Rights Division under the previous Administration. In a letter of February 18, 1983 to the Special Master overseeing the formulation of a voluntary settlement agreement to secure school desegregation in the St. Louis metropolitan area, Assistant Attorney General Reynolds stated that "we do not believe that the inclusion of paragraph g which discusses housing issues has any place in the settlement of the issues addressed in paragraph 12g [school desegregation]."[218]

The decision of the Justice Department to ignore exclusionary zoning will have a very adverse effect on efforts to achieve fair housing in urban areas, particularly since it comes at a time when other federal programs, regulations and incentives supporting the consideration of housing needs on a metropolitan basis have been almost completely terminated. Racial and economic segregation between central city and suburb has not changed in any significant degree. For example, a recent unanimous decision by the New Jersey Supreme Court [219] upheld findings that there was an overwhelming present and future need for low and moderate-income housing in 23 county municipalities and that a clear pattern of exclusionary zoning patterns existed. The Court noted the impact of such practices on minorities and stated that it was firmly committed to the doctrine "that municipalities' land use regulations provide a realistic opportunity for low and moderate-income housing." The Court continued, "[w]e believe that there is widespread noncompliance with the [State] constitutional mandate of our original opinion in this case." To assure realistic opportunities the Court ordered that the exclusionary practices be eliminated and further affirmative governmental devices may be required.[220/]

The Justice Department's apparent view that exclusionary zoning is not a fair housing problem worthy of attention and resources stands in stark contrast to the diagnosis of the New Jersey Supreme Court.

Further limiting its ability to challenge exclusionary land use is the Department's decision to require a showing of an intent to discriminate in zoning (as well as other fair housing) cases. For example, the Department told a federal court in U. S. v. Birmingham [221/] that its case was based on discriminatory intent and that it would not employ the "effects test, despite its recognition that federal courts of appeal have upheld the approach.[222/]

More recently, the Assistant Attorney General reiterated this position in a letter to the HUD General Counsel explaining the decision not to pursue a case that Mr. Knapp referred to the Civil Rights Division: ...[W]e have concluded that there is not sufficient evidence at this time to make a claim of intentional discrimination on account of race...Indeed, we do not understand the findings of HUD as including a finding of purposeful discrimination." He continued: "Absent evidence of intentional discrimination, we would not file a suit pursuant to the Attorney General's pattern or practice authority under Title VIII, 42 U.S.C. §3601 et seq."223/

The impact of the Department's decision may be gleaned from the observation of a federal court in a zoning decision:

> A strict focus on intent permits racial discrimination to go unpunished in the absence of evidence of overt bigotry. As overtly bigoted behavior has become more unfashionable, evidence of intent has become harder to find. But this does not mean that racial discrimination has disappeared.224/

Federal courts have not relied solely on naked statistical evidence to satisfy the effects test and finding that there has been discrimination. While proof of disproportionate impact is one factor, they have also weighed other factors that demonstrate that the law was applied to the barred project in a discriminatory manner.225/ The Department's interpretation of Title VIII that the standard of proof necessary to prove a case of discrimination is inconsistent with the majority of judicial holdings on this issue and unreasonably restricts its ability to secure remedies for a larger number of victims of discrimination.

Even in cases where the Department proves racial intent, it apparently will not seek effective remedies. In its requests for relief and its settlement agreements, the Department evidences a reluctance to seek concrete commitments. In the Yonkers case, for example, the Department eliminated from its request for relief the provision of a specific number of units in designated locations to assure expanded housing choice, and merely asked that the City be required not to oppose construction of subsidized housing.[226]

In sum, the Reagan Administration's Justice Department has dramatically slowed the pace of fair housing litigation and has made policy changes likely to render much of the litigation that is brought ineffective. Justice Department's lawsuits, once a prime tool for implementing national fair housing policy, now appear to have been reduced to insignificance.

HUD: The Administration's Weakening of a Weak Program

The 1984 Administration budget is a continuation of the policies adopted in 1981 but at a lower level of funding. Fair housing assistance programs would be reduced by $1 million--from $5.7 million to $4.7 million.[227] The funds would be used for the same two activities: efforts to secure voluntary compliance from members of the housing industry through activities conducted by Community Housing Resource Boards (CHRBs), and improved performance by state and local agencies having laws substantially equivalent to Title VIII.[228] The restrictions on the activities of CHRBs have been described earlier. Similarly, assistance to state and local agencies is limited to use in the investigation and resolution of complaints. While the number of agencies that would share the funds would increase from 32 in 1981 to 90 in 1984, the allocation remains at $3.7 million.[229]

The million dollars cut from the budget come out of the allocation for CHRBs. Perhaps the sharp criticisms of the program are in part responsible. HUD justifies the reduction as necessary in order to utilize "unobligated balances."[230] HUD also "proposes to undertake a comprehensive reevaluation of the program during 1983."[231]

Some reduction in Fair Housing and Equal Opportunity staff was accomplished in 1982 (576-558) and the budget shows no further cut in the number of employees although the estimated amount of funds computed in terms of "total staff time" for fair housing and equal opportunity tasks was reduced in 1983 and would be reduced again in 1984.[232]

The selection of these two activities to the exclusion of others, particularly counseling, is an unjustifiable use of this small sum of money.

Counseling has proved to be an important, if not essential, component in undoing the effects of past discrimination and the dismantling of the dual market. HUD, in fact, in past years funded and promoted the activity in many areas of the country. It evaluated private agencies that conducted counseling programs, provided technical assistance for groups attempting to supply the service and developed a system of certification to increase their ability to extend the service and to obtain funding from other sources. Even when HUD had no money for counseling, it continued to support the program although never to the extent necessary, particularly for fair housing purposes. Counseling by HUD has been directed to "tenants and homeowners with respect to property maintenance, financial management, and other matters."[233] At a minimum, most counseling agencies include guidance on the right to housing without discrimination. In 1982, the Administration attempted to terminate the program but Congress rejected the proposal and maintained funding at a $3 million level.[234] IN 1983, HUD approved 550 agencies and funded 170. It estimates that 58,000 clients received counseling under this program. In 1982, 59,000 were assisted.[235] The

Administration is seeking to terminate the program once again [236], although it will continue to certify and recertify an estimated 500 local public and private nonprofit agencies.

The value of counseling to achieving the national fair housing objective has been demonstrated, particularly by the program that was established by the consent agreement the Department entered into to remedy its violation in the Gautreaux case.[237] The agreement provided: 1) assistance to members of the plaintiff class--tenants and persons eligible for public housing in Chicago and 2) a mechanism for locating landlords willing to enter into contracts with the Chicago Housing Authority or otherwise make available their units in predominantly white areas of the Chicago metropolitan area.

Counseling under this program entailed contacting and informing tenants of the agreement and following through with interested families by visiting available units and evaluating the appropriateness of the location as well as the unit in terms of their needs. The program has succeeded in securing housing of their choice for more than 600 families. The turnover has been below that for the market generally. For those families who have successfully made the transition, it has opened up training and job opportunities and services and facilities that had not been available to them. The experience gained under this and smiliar programs has demonstrated the utility of counseling as a means for improving the living conditions of people who have been subjected to discrimination.[238]

Conclusion

For the past half century the federal government has been a powerful force in determining the availability and cost of housing to its citizens. In the Depression years, when government first intervened, its purposes were largely defensive--to prevent the collapse of the economy, of which the housing industry is a major segment and save Americans from the loss of their single most valuable asset, their homes. After World War II, the goals of federal policy became more ambitious. Through a variety of housing, economic and community development measures, government sought not only to contribute to the industrial health of the nation but to provide green space and better living conditions for families and to make the opportunity for homeownership more widely available in this country than anywhere else in the world. This policy resulted in a major suburban expansion of the nation's cities.

The principal beneficiaries of national housing policies have been middle class Americans. It is true that since the enactment of the public housing program in the 1930s, one segment of national policy has encompassed an effort to meet the housing needs of low-income people. But only a small proportion of low-income people has ever benefitted from these programs and the resources devoted to them are inconsiderable when compared to the huge sums in mortgage aid and tax subsidies made available to the middle class.

Most important, during the period when FHA mortgage assistance and other programs were operating full throttle, first to save the housing industry and then to finance suburban expansion, a "whites only" label was firmly affixed to these programs. Federal policymakers cooperated with state and local governments, real estate brokers, developers and financial institutions to assure that minorities were excluded from assistance designed to benefit the middle class and that low-income housing was provided only on a segregated basis. The federal government placed its imprimatur on the exclusionary and segregative practices of others and helped shape the current racial demography of the nation's cities. For minorities, the government's housing policies meant that they were confined to ghettos, lacking choice and access to the jobs and services that would have afforded them the opportunity to become part of the mainstream.

These oppressive federal policies did not change significantly until 1968 when the courts, the President and Congress acted firmly to provide tools for combatting discrimination and some of the resources needed to enable low-income minorities to obtain decent housing. But these tools and resources have never matched those employed by government during the period when its policies were blatantly discriminatory. This point is illustrated graphically in the fact that while during the 1930s federal agencies compiled a detailed blueprint for preventing the "infiltration of inharmonious racial or nationality groups" into suburban neighborhoods and schools, in the 1970s and 1980s the same agencies have refused to issue interpretive regulations to give meaning to the 1968 fair housing law. As a result, while the techniques have been refined, discrimination has not ceased and minorities are still compelled to struggle in a dual market with housing choices that are more constricted and more expensive than those available to whites.

Given the failure of the federal government to take action that would match its verbal commitment of the 1960s, it is not surprising that the early analyses of the 1980 census show only the most limited progress in dismantling the dual housing market.

In the 1980s, new threats to achieving the goals of fair housing have arisen. In the name of deregulation, the Reagan Administration has largely withdrawn one of the few effective tools of fair housing enforcement--lawsuits filed by the Department of Justice. Yet the need is to maintain the remedies that now exist while fashioning new mechanisms to assist people who encounter discrimination in the housing market.

At the same time, the Administration has assessed the role of the federal government in housing in ways which will lead to an abdication of its role of assisting the poor in obtaining adequate housing. Although the impetus for this reconsideration is said to be economic and budget constraints, no serious action has been proposed to limit the much larger tax and housing subsidies that continue to go to middle class and affluent people. While reassessment of existing programs to seek the most efficient and cost effective ways of meeting national housing goals may be useful, it should be recognized that withdrawal of the federal government would constitute forfeiture of the 1949 goal of "a decent home and a suitable living environment" for all Americans and would make a mockery of the promise of equal housing opportunity to minorities.

Recommendations

I. The Commission recommends the following legislation to improve the enforcement of the fair housing law.

A. Amend the law to establish an administrative process to permit victims of housing discrimination to secure relief without the necessity of filing lawsuits. Enforcement of rights guaranteed by the Fair Housing Law now permits individuals to file private lawsuits to secure their rights under the law and authorizes the Attorney General to pursue cases of discriminatory patterns or practices. The Department of Justice may not secure remedies for individual victims of discrimination. Although the Department of Housing and Urban Development is charged with administering Title VIII, it has no authority to enforce the law on behalf of those who are denied housing in violation of the law. It can only attempt to conciliate the controversy and obtain voluntary adherence to the law's requirements.

These mechanisms have not proved adequate to secure the rights of citizens to fair housing opportunity. In fact, the burden of law enforcement under Title VIII has been placed on the individual victims and the judicial process.

The adoption of an administrative process would ease the burden on individual victims who today face inordinate delays and high costs in pursuit of a judicial remedy and would protect the rights of respondents in accordance with the Administrative Procedure Act. It would ease the caseload for federal courts as well.

The addition of an administrative enforcement mechanism would provide persons who believe that they have been denied a dwelling in violation of Title VIII an effective alternative to filing a private lawsuit. The establishment of an administrative remedy would provide the now missing incentive under the HUD conciliation process to bring the parties in a controversy to the conciliation table.

1. The process should include a mechanism for obtaining, where necessary, temporary equitable relief through the courts to hold a house or apartment off the market while the complaint is adjudicated. A home, whether it is an apartment or house, is often unique to the family who seeks to own or rent it. Where another similar unit cannot be substituted, alternative remedies, e.g., money compensation or the promise of a different unit in another location are inadequate.

It is essential, in these special situations, that there be authority in the administrative process to apply to the court for a temporary order to prevent that unit from being disposed of and made unavailable to the complainant should he or she prevail. As in a request for any such order, the court would apply the same strict standard: Rule 65 of the Federal Rules of Civil Procedure provides that a temporary restraining order may be granted only if it is clear that "immediate and irreparable injury, loss, or damage will result."

2. HUD should be required to issue comprehensive interpretive regulations implementing the legislation within 90 days of enactment. HUD is the agency responsible for administering Title VIII. In the fifteen years since enactment, the Department has not issued inter-

pretive regulations or other comprehensive guidance with respect to the law's provisions.

The mandate to issue regulations to implement the amendments to the fair housing law would require HUD finally to provide a uniform and comprehensive interpretation of the law as originally enacted in 1968 and amended.

B. Amend the law in such a manner as to extend protection to prevent discrimination against handicapped persons and families with children.

1. Handicapped persons. In 1973 Congress recognized that handicapped persons did not have access to decent housing and barred this form of discrimination in federally-assisted housing. But discriminatory practices against disabled people still prevail in the private market. Many landlords refuse to rent to handicapped persons or demand higher security deposits and rents based on unwarranted assumptions that such tenants are more likely to cause damage. Owners also base refusals to sell on fears that extending the protection of Title VIII to the handicapped will require them to make costly alterations to their property to make it accessible to the physically handicapped. Both the bill that passed the House and that was reported by the Senate Judiciary Committee in 1980 prohibited sellers and lessors from refusing to rent or sell to, or setting different terms for handicapped persons on the basis of these unfounded assumptions. The bills addressed the concerns noted by permitting refusals to rent where it is demonstrated that a handicapped individual could not conform to reasonable standards

of occupancy. Similarly, the bills provided that the expense for physical alterations need not be borne by the property owners. It is clear that reasonable standards can be written into law that would expand housing availability and accessibility for the handicapped without placing undue burdens on owners or landlords.

2. Families with children. Families with children face a growing crisis in their efforts to obtain suitable housing. Increasingly, apartment owners exclude from occupancy families with children; in California families with children are now barred from 70% of all rental units. In addition, new apartment construction and conversions of existing units have resulted in more efficiency and one-bedroom apartments and fewer units large enough to accommodate families with children. Some states and localities prohibit this form of discrimination and others are now considering such legislation. While this provision would not directly increase the supply of family size units, it would assure access to appropriate units by families and require the administration of federal housing programs consistent with this national policy.

C. Amend the fair housing law so as to--

--Permit the award of reasonable attorney and expert witness fees to the prevailing party. In order to make the right of private action under Title VIII more effective, it is essential that victims of discrimination have access to attorneys and experts. Under existing law attorneys' fees are allowable only on a showing that the plaintiff is "not financially able to assume said attorneys' fees." (This provision is inconsistent with the Civil Rights

Attorneys' Fees Award Act). Because of the risks and high cost of litigation, this limitation has had the effect of discouraging individuals from pursuing justifiable claims. Permitting the award of attorneys' fees will insure access to the judicial process.

--Extend the statute of limitations from 180 days to two years. The extension of the statute of limitations from 180 days to two years would remove another serious impediment to securing one's rights under Title VIII. Housing discrimination is often subtle and not apparent until later events indicate that distinctions based on race, sex, national origin or religion were the reasons for a refusal to rent, sell, provide mortgage credit, etc. The extension of the period to two years is therefore essential.

D. Amend the fair housing law so as to codify judicial decisions, in areas such as prohibiting racial redlining, discriminatory property insurance, appraisal and land use practices.

The courts have applied Title VIII to prohibit all forms of discrimination in housing. To assure uniform interpretation and to provide improved notice to persons and organizations affected by the fair housing law, inclusion in the law of the particular discriminatory practices and policies held prohibited under judicial decisions is needed. This involves no substantive change in coverage but merely clarification of what has been declared unlawful.

E. Amend the fair housing law so as to assure that investigative and enforcement responsibility will be delegated to state and local agencies only when they have a demonstrated capacity to provide timely and appropriate relief to complainants. HUD currently delegates comliance responsibilities to a number of states and localities that have enacted fair housing laws deemed by HUD to be "substantially equivalent" to the federal fair housing laws. Several of these laws are administered by agencies that are adequately funded and staffed to provide timely and effective relief to victims of discrimination. But in other jurisdictions, while the law may be adequate on paper, the agencies administering it do not have the capacity to perform this function. Some agencies are so new that they lack the experience necessary to process and resolve disputes; others are not provided sufficient funds or staff to meet their statutory obligations; and others, given sufficient resources have nonetheless not demonstrated an ability to implement their laws.

To prevent unwarranted delays to victims of discrimination, it is necessary to condition certification and the deferral of complaints to state and local agencies on their performance in carrying out their fair housing responsibilities under the law.

F. Amend the fair housing law so as to establish the right of all low and moderate-income persons to counseling to assist them in securing suitable housing in locations of their choice. HUD, directly and through certified private nonprofit organizations, has provided counseling services to a very limited extent. As housing assistance provided through federal funds is increasingly directed to the use of existing housing in the private market, advice and guidance for low and moderate-income minorities and female-headed households becomes more urgent.

The program created pursuant to the consent agreement in the Gautreaux decision is an example of the effectiveness of a funded counseling program carried on through governmental/private cooperation. The uncertainty and meagerness of governmental support has kept the HUD-certified counseling agencies from making this service available consistently to those in need. As indicated in the text, HUD has reported that where Congress appropriated and HUD utilized a $3 million fund for counseling, 59,000 persons were reported by HUD to have benefitted. This suggests that the counseling program could be extended at reasonable cost to include all who would benefit from this housing support.

II. Executive action:

A. The President should direct the Department of Justice to rescind policies that are in conflict with the prevailing decisions of federal courts and that hamper the effectiveness of the Title VIII enforcement program. These Justice Department policies include the requirement that proof of racial intent be available before Title VIII cases are brought and the apparent exclusion of important categories of practices, e.g., discriminatory land use action, from the Department's litigation agenda.

Relief obtained by the Department of Justice through judicial decrees, settlement or consent agreements should include specific actions to assure the abandonment of the discriminatory practice and/or policy and steps to actually make units available now and in the future.

Discrimination in housing has become more complex and subtle. The shift by the Justice Department to require proof of intent will create barriers to the elimination of discriminatory practices that have substantial and broad impact in the community. The Department's position will discourage as well the institution of otherwise valid litigation because of the uncertainty it engenders on the entire question of standard of proof.

Relief that is requested and obtained by the Department of Justice has ramifications beyond the immediate parties. The remedy may serve either as a deterrent to others who would pursue discriminatory practices or they may be signals that violating the law results in a minimal penalty. It is essential that the relief requested redresses the violation and conveys the message that the law will be enforced.

B. The President should direct HUD to issue immediately Title VIII regulations as submitted to Congress in December, 1980 to meet its obligation to administer the national fair housing law. The failure of HUD to issue regulations interpreting Title VIII has created uncertainty over the years for persons affected by and concerned with the application of Title VIII. It is now appropriate, however late, for HUD to provide guidance based on judicial decisions as well as HUD's experience and expertise to avoid unnecessary misunderstanding as to what the law requires. When fair housing amendments are enacted, new regulations will be issued.

The President should direct HUD to rescind existing voluntary agreements and renegotiate with industry members new agreements that will result in industry action that goes beyond the mere endorsement of the fair housing law and commits industry to taking steps that further the national fair housing objective. There is no benefit to entering into agreements to persuade members of the housing industry to do what they are required to do under the law. Voluntary agreements are useful only insofar as they buttress and complement enforcement and compliance activities. Further, as these agreements are presently applied, it is possible for members of the industry to use their endorsement as a protective shield while they continue to operate in a manner inconsistent with the requirements of the law. The recent amendments to the agreement with the National Association of Realtors further insulates realtors by prohibiting the release of the names of signatories to these agreements. The result is a voluntary agreement with parties who may remain nameless and not held accountable for complying with even the minimum legal requirements.

The President should direct funding of CHRBs (Community Housing Resource Boards) be terminated absent support for activities that will affect market practices and encourage participation from all segments of the community. The $2 million appropriation to support CHRBs that are formed to implement the above voluntary agreements should be terminated. The restraints on the membership and activities of these Boards undermine any service they may render in opening up their communities. It is only a rare CHRB that is able to utilize the funding provided to make inroads in the dual market.

The President should direct HUD to carry out its duty under Title VIII to conduct studies, publish and disseminate reports on the nature and extent of discrimination in areas such as discrimination against families with children and the handicapped, and housing policies which support school desegregation and accessibility to jobs.

There is substantial evidence of housing discrimination against the handicapped and families with children. In order to assure that these classes are protected, the systematic collection, analysis and dissemination of information on their housing conditions should be initiated by HUD. The same need exists for understanding and acting on housing policy as it affects educational and employment opportunities. While HUD has expressed concern and, in 1979, took a limited look at the housing problems of families with children, it is not presently addressing these issues nor even minimally collecting basic factual information on supply of housing for, and occupancy by members of these groups.

Also, in late 1979, HUD considered undertaking a study of the interplay between the placement and occupancy of federal housing projects and the operation of school desegeration plans. The project was never begun.

As new programs are contemplated, such as enterprize zones and housing vouchers, to continue to ignore the impact of ongoing and new programs on employment and educational opportunities will doubtless have the effect of prepetuating segregation and discrimination and, worse, run counter to efforts in other sectors of the government, including the courts, to expand opportunities and undo the effects of past discrimination.

The President should direct HUD to abandon its effort to change by regulation the intent of Congress that Housing and Community Development Act funds be used to principally benefit low and moderate-income persons, and that it administer the program in conformance with the nondiscrimination requirements of the Act. Block grants long have been viewed as a threat to the interests of minorities because anti-discrimination provisions ordinarily are more difficult to enforce than under categorical programs. In an effort to provide reassurance on this issue Congress, in the Community Development Block Grant, provided that the funds must be used to principally benefit low and moderate-income persons and that no person shall be denied access to these benefits because of race or sex.

Current regulations require that a substantial portion of Housing and Community Development money must directly benefit the economically disadvantaged and that local jurisdictions that receive HCD funds must take steps to assure access to all housing in the community without discrimination. It is essential that HUD not amend this regulation and further that it monitor to assure that the jurisdiction is carrying out its express commitment and can demonstrate satisfactory results.

Now, however, HUD is attempting to eliminate or substantially modify these regulations in a manner that is inconsistent with legislative intent and may result in a loss of needed support to minorities and female-headed households who are at or below the poverty level.

The President should direct HUD to collect and publish data on the race and sex of recipients of its program benefits in a manner enabling it to monitor for and secure compliance with the civil rights laws. Should the fair housing law be amended to protect handicapped persons and families with children, the same requirement should apply. The collection of data on the race and sex of beneficiaries of federal programs has been marked by stops and starts, inconsistencies and nonenforcement. Whether for purposes of relieving regulatory or paperwork burdens or the failure to recognize that these data are essential to enforcement of the civil rights laws, attempts to eliminate or curtail this governmental obligation are frequent and result in huge gaps in information. It must be made clear the types of data required, the frequency of reporting and the requirement that the data be published.

III. We further recommend that the Administration and the Congress reverse their policies that have drastically reduced and restricted federal housing assistance for low and moderate-income persons. Congress should enact legislation to continue and adequately fund existing housing programs to meet the needs of low and moderate-income families. Funds should be available for persons living in inadequate housing, spending more than 25% of their income for housing expense or threatened with displacement by a governmentally-assisted activity.

Funds should be used as needed in the community for:

- new construction;
- substantial rehabilitation of existing units; and
- existing standard units.

In 1968, Congress set a ten year housing goal of 6 million new units for lower-income families, a disproportionate number of whom are racial minorities. Fifteen years later, we have not even met half of that goal of 6 million units. If anything, the need today, acknowledged by HUD to be 18 million families who require some form of housing assistance, is even greater than it was in 1968. Yet the proposed budget for 1984 drastically reduces funds available for any assisted housing and eliminates almost entirely any newly-constructed and substantially rehabilitated subsidized housing. In 1982, actual expenditures for additional units were $13.3 billion (authorization was for $17 billion); in 1983 the estimated expenditure is $8.6 billion. In 1984, the Administration is requesting a mere $514,708 million.

Aside from the inadequacy of a program that relies almost solely on existing affordable standard housing, the absolute reduction in funds proposed in the Fiscal Year 1984 budget--a 96% reduction from 1982 and a further reduction of 94% from 1983--makes it impossible to meet the urgent and growing need of lower-income families for decent housing.

IV. We further recommend the establishment in the private sector of a national bipartisan task force to examine the causes of the housing crisis facing low-income families, to analyze the deficiencies of current and proposed federal housing programs and to recommend realizable programs for implementing the national goal of a "decent home and a suitable living environment for every American family."

The mandate to the task force is to analyze and understand the operation and consequences of past and present programs in order to recommend the steps to be taken in the future to eliminate housing discrimination and deprivation.

A. The task force would be charged with completing its examination and recommendations within a specific period of time. The task force should be established and supported by a private fund provided by one or more charitable foundations which would be responsible for appointing members to the task force. (A useful precedent is the Flexnor report, commissioned by the Carnegie Corporation for the Advancement of Teaching, which exposed the deficiencies of American medical schools and charted a course for reform). As a whole, the task force should possess competence and experience in housing and civil rights and should be broadly representative.

No public or private group has been charged with examining this issue. For a short period of time, a committee established by Executive Order in 1962--the President's Committee on Equal Opportunity in Housing--operated with limited resources and authority and did not even presume to undertake a comprehensive evaluation of housing and civil rights. While there have been governmentally-appointed commissions on housing costs and federal housing programs, none has addressed the implications for housing for minorities and women and the impact on equal educational and employment opportunities. Significant changes in the law and in housing conditions have occurred in the fifteen years that have elapsed since the enactment of Title VIII. It is time for an intense examination into the present and prospective state of fair housing.

B. The task force should examine the adequacy of existing urban assistance programs to achieve the national goal. It should determine whether the national goal would be better achieved by targetting assistance to those states and regional bodies which are prepared to develop and implement ("fair share") metropolitan-wide or regional approaches for meeting housing needs. In carrying out this task, the task force should examine the experience of metropolitan and regional bodies that have secured the cooperation of their constitutent local jurisdictions in assessing and meeting the housing and community development needs of lower-income families, particularly minority and female-headed households.

The responsibility of state and local governments to consider housing needs of lower-income persons across local jurisdictional boundaries was addressed by the New Jersey Supreme Court in a recent opinion. It provides a rationale and guidance for other state and local governments to adopt a form of "fair share" program.

C. The task force should prepare an analysis comparing long-range costs of a program to provide adequate housing in a choice of locations with the costs in joblessness, loss of productivity, transportation, etc., of current policies relegating minorities and low-income people to ghettos cut off from employment opportunities and services. The analysis should include housing costs to minority families that flow from the restrictions imposed by a dual market. The 1980 Census reports the continuing movement of jobs out of the central cities and into suburbs and beyond where there is a scarcity of housing affordable by low and moderate-income families and where discrimination against minorities is prevalent. The data show that the proportion of minorities living in central cities and suburbs has remained static for the most part. An understanding of the costs over the past two decades and a projection of costs should these trends continue is basic to taking action to meet present needs and to undo the effects of past discrimination.

D. The task force should evaluate the effectiveness of existing and proposed federal housing subsidy mechanisms, if adequately funded and administered, in providing housing choice and mobility for recipients. In conducting this evaluation the task force should consider the need for new construction, substantial rehabilitation and existing housing in relation to the market characteristics in the different areas of the country, and how the programs would affect housing opportunity. (The task force should determine which subsidy mechanisms, e.g., interest subsidies, public housing, vouchers, are most effective in achieving the objective). Because of the housing market variations between cities and suburbs, different housing programs will be necessary to meet their needs as well. Similarly, costs will vary depending on whether it is necessary to construct new units, rehabilitate old units or utilize available existing standard housing. These determinations will affect directly the segregated residential patterns in place and will influence future racial and economic residential arrangements. For example, sole reliance on a voucher system based on the premise that affordability is the key to housing lower-income persons has substantial negative implications, particularly for minorities and women. If there is an insufficient supply of decent housing at rents people can afford with a subsidy, the subsidy has zero value for those closed out. For minorities and women, the existence of such units does not assure accessibility unless fair housing requirements are strictly enforced and counseling is available. The dual market in all parts of the country and the unavailability of affordable units will not support a voucher system absent additional provisions for supplying needed units through new construction or substantial rehabilitation of substandard units, and counseling support to assist minorities and women in securing housing. Thus, while vouchers may be less costly, they may not further better housing or choice if they are the only type of housing assistance provided.

E. In considering strategies for meeting the national housing goal, the task force need not be limited to federal housing subsidies. As the Supreme Court of New Jersey has stated in its recent opinion in the Mt. Laurel II case, housing needs may be met without subsidies by placing on developers of subdivisions the responsibility to set aside a percentage of units to meet the needs of low-income people. Because this assurance of housing for low-income people in such subdivisions has not resulted in housing for minority families, fair housing enforcement is an essential part of any such program. The task force should evaluate the experience of communities in such states as California, Maryland and Massachusetts which have implemented similar programs.

Similarly, in areas that are targetted for community or economic development programs such as the proposed "enterprise zones", consideration should be given to requiring the beneficiaries of such aids to provide housing which would meet the needs of low and moderate-income groups and which would be integrated. Benefits that attach to the economic portion of the undertaking could be used as well to stimulate the provision of housing.

F. The task force should assess the need for coordination of governmental policies in education, employment, transportation and community and economic development with housing policies in order to achieve an urban policy that is rational, fair and cost efficient. Housing segregation imposes costs in transportation, education, community development and other services, not only on minorities and the poor, but on the community as a whole. Coordinated action at every level of government is needed to reduce these costs and provide opportunities for all persons.

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Footnotes

1. *Buchanan* v. *Warley*, 245 U.S. 60 (1971).

2. *Id*.

3. *See* *Shelley* v. *Kraemer*, 334 U.S. 1 (1948).

4. Report of the U.S. Commission on Civil Rights 537 (Sept. 1959) (proposal by Commissioners Hesburgh and Johnson) (hereinafter referred to as 1959 Civil Rights Report).

5. *See*, *e.g.*, *Contract Buyers League* v. *F.&F. Investment Co.*, 300 F.Supp. 210 (N.D. Ill. 1969), *aff'd* *sub. nom.*, *Baker* v. *F.&F. Investment Co.*, 420 F.2d 1191 (7th Cir. 1970).

6. 42 USC §1401

7. Congressional Record, July 31, 1937 p. 7967.

8. U. S. Housing and Home Finance Agency, Public Housing Administration, *Low-Rent Housing Manual*, §1021 (1951).

9. National Housing Act, Pub. L. No. 73-479, 48 Stat. 1246 (1934) (codified as amended in scattered sections of 12 U.S.C.).

10. Federal Home Loan Bank Act, Pub. L. No. 72-522, 47 Stat. 725 (1932), 12 U.S.C. §1421; 15 U.S.C. §57(a)(1976 and Supp. I 1977, Supp. III 1979, Supp. IV 1980 and Supp. V 1981).

11. Title III of the National Housing Act, 12 U.S.C. §1723(a) (Charter Act).

12. *The Richmond School Decision: Complete Text of Bradley v. School Board of Richmond* at 172 (Chicago, Illinois: Integrated Education Associates, 1972)(reviewing *Bradley* v. *School Board of Richmond*, 338 F.Supp. 67 (E.D. Va. 1972).

13. United States Federal Housing Administration, Underwriting Manual Underwriting and Valuation Procedure Under Title II of the National Housing Act, para. 228 (Apr. 1936 rev'd. ed., Nov. 1936).

14. *Id*. at para. 266.

15. *Id*. at para. 228.

16. *See* *supra* note 10 at 173.

17. United States Federal Housing Administration, Underwriting Manual, para. 935, 937 (rev'd to Feb. 1938).

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18. Congressional Record March 22, 1944, p. 3284.

19. The Serviceman's Readjustment Act of 1944 (38 U.S.C. §1801 *et seq*., June 22, 1944)

20. *Id*. at Title III.

21. Housing Act of 1949, Pub. L. No. 81-171, 63 Stat. 413 (1949) (codified as amended in scattered sections of 12 U.S.C., 31 U.S.C., 38 U.S.C. and 42 U.S.C.).

22. *See supra* note 7.

23. Mortgages for veterans were guaranteed by the Servicemen's Readjustment Act (G.I. Bill), (Pub. L. No. 78-346, 58 Stat. 284 (1944) *as amended*.

24. *Equal Opportunity in Suburbia*, 43, U. S. Commission on Civil Rights, July 1974. See also *Building The American City*, Report of National Commission on Urban Problems, 99, 1968.

25. The benefits conferred on homebuyers included tax deduction for mortgage interest payments and local property taxes, community-provided infrastructure, new school systems and the incentives for corporations to locate in new industrial parks in order to provide a stable and substantial tax base to support the growing community.

26. *Bradley* v. *Milliken*, 317 F.Supp. 555 (1970). See Record, V. 2 at 47, V. 5 at 78.

27. *Hearings in New York City Before the U. S. Commission on Civil Rights* 349 (1959).

28. National Committee Against Discrimination in Housing (NCDH), *Impact of Housing Patterns on Job Opportunities* (1967). *See also* "Increases in Job Total on L. I. Quickened in 1975-80 Period", The New York Times, December 13, 1981.

29. *See*, *for example*, New York Laws 1950 ch. 287, p. 961; Montana Laws 1959 ch. 195, p. 422; Michigan Public Acts 1952, ch. 2958, p. 836, Massachusetts General Laws Ann. ch. 121 §26FF (1957) *amended by* Massachusetts General Laws Ann. ch. 151B, §§1-4 (West 1982); Pennsylvania Statute Ann. tit. 35, §1664 *as amended* (Purdon 1977); Minnesota Statute Ann. §462.481 *as amended* (West 1963).

30. In fact, the federal requirement that a cooperation agreement be executed between a local jurisdiction and the local housing authority (see infra note 26) had a discouraging effect. *See Mehaley* v. *Cuyahoga Metropolitan Housing Authority*, 355 F.Supp. 1245 (1973)(Three judge court), 355 F.Supp. 1257 (1973)(One judge court), *rev'd.*, 500 F.2d 1087 (1974). *See also Fair Housing and Exclusionary Land Use*, p. 15, National Committee Against Discrimination in Housing (1974).

31. *See* United States Housing Act of 1937, Pub. L. No. 75-896, 50 Stat. 888, 42 U.S.C. §1415(7)(b)(i), *as amended*.

32. The Urban Renewal Program was introduced pursuant to the Housing Act of 1949. *See supra* note 16.

33. *Garrett* v. *City of Hamtramck*, 335 F.Supp. 16 (D.C. E.D. Mich. 1971).

34. *Ibid*.

35. *See supra* note 3.

36. *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

37. *See* U. S. Commission on Civil Rights, *Fair Housing and the Law* 6 (February 1973).

38. *Davis* v. *Housing Authority*, 1 Race Rel. L. Rep. 353 (1956) (E.D. Mo. 1955). *See also Heyward* v. *Public Housing Administration*, 238 F.2d 689 (5th Cir. 1956), *dismissed on other grounds*, 154 F.Supp. 589 (S.D. Ga. 1957), *argued sub. nom.*; *Detroit Housing Commission* v. *Lewis*, 226 F.2d 180 (6th Cir. 1955); *Eleby* v. *Louisville Municipal Housing Commission*, 2 Race Rel. L. Rep. 815 (1957)(W.D. Ky.); *Askew* v. *Benton Harbor Housing Commission*, 2 Race Rel. L. Rep. 611 (1957) (W.D. Mich. 1956); *Kankakee County Housing Authority* v. *Spurlock*, 3 Ill. 2d 277, 120 N.E. 2d 561 (1954)(*Semble*).

39. Memorandum from Joseph Burstein, General Counsel, Public Housing Administration to Walter A. Simon, Director, Philadelphia Regional Office, Dec. 21, 1962; repealed, PHA Low Rent Housing Manual Sec. 205, 1, p. 7 (1965).

40. *See* case cited *supra* note 5.

41. *See supra* notes 10-15.

42. *Id*.

43. 1959 Civil Rights Report at 538.

44. H. Wofford, *Of Kennedys and Kings: Making Sense of the Sixties* 58 (1980).

45. *Id*. at 140.

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46. Exec. Order No. 11,063, 27 Fed. Reg. 11,527 (1962), *as amended by* Exec. Order No. 12,259, 46 Fed. Reg. 1253 (1980), *reprinted in* 42 U.S.C. §1982 app. at 1217-1218 (1976). The U. S. Commission on Civil Rights had recommended again in its 1961 Report that an Executive Order be issued that would specifically cover "all Federal agencies concerned with housing and with home mortgage credit." at p. 150.

47. *Id.* at para. 4002 §101.

48. *Id.* at para. 4003 §102; *see also* para. 4008 §302; para. 4009 §303; para. 4010 §304.

49. *Id.* at para. 4008 §302.

50. *See generally* Staff of the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong. 2d Session, Report on Civil Rights 143 (Comm. Print 1976)(Martin E. Sloane, *Federal Programs and Equal Housing Opportunity*).

51. President's Committee on Equal Opportunity in Housing, Reports to the President, 1965, 1966.

52. Understanding Fair Housing, 6, U. S. Commission on Civil Rights Publication 42, 1973.

53. Letter from William L. Slayton, Urban Renewal Administration, to the Commission on Civil Rights, May 18, 1961.

54. Executive Order 8802, June 25, 1941.

55. Executive Order 9981, July 26, 1948.

56. Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 252 (codified as amended at 42 U.S.C. §2000d [1976 and Supp. IV 1980]).

57. Section 601 of Title VI provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. §2000d (1976).

58. Section 605 of Title VI provides:

> Nothing in this subchapter shall add to or detract from any existing authority under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

42 U.S.C. §2000-4 (1976).

59. U. S. Department of Housing and Urban Development, 1976 Statistical Year Book, 50, Table 2.

60. In early 1966, President Johnson sent a message to Congress concerning legislation for combatting racial discrimination in which he said:

> I ask the Congress to enact the first effective Federal law against discrimination in the sale and rental of housing...The time has come for the Congress to declare resoundingly that discrimination in housing and all the evils it breeds are a denial of justice and a threat to the development of our growing urban areas...The time has come to combat unreasoning restrictions on any family's freedom to live in the home and the neighborhood of its choice.

Equal Opportunity in Housing 2312 (P-H)(1971).

61. H.R. 14765, *id*. at 2312-13.

62. S. 3296 at *id*.

63. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e (1976 and Supp. IV 1980).

64. Title II of the Civil Rights Act of 1964, 42 U.S.C. §2000a (1976).

65. U. S. Constitutional Amendment XIII; U. S. Constitutional Amendment XIV; U. S. Constitutional Amendment XV.

66. PHA Low-Rent Housing Manual, §205, 1, p. 7 (1965). *See also supra* note 34.

67. The Department amended Title VI regulations by adding a provision under "discrimination prohibited." Approved by President Johnson on October 19, 1967, it required that local housing agencies assign eligible applicants to dwelling units based on 1) when the application is received; 2) the type of unit available; and 3) factors affecting priority which are not incompatible with Title VI objectives. Equal Opportunity in Housing 2310 (P-H)(1971).

68. Gautreaux v. Chicago Housing Authority, 296 F.Supp. 907.

69. Gautreaux v. Romney, 448 F.2d 731, 739-740 (1971).

70. Hills v. Gautreaux, 425 U.S. 284, 299 (1976).

71. U. S. Department of Housing and Urban Development, Gautreaux Housing Demonstration, 28, 29 (1979).

72. Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. §§3601-3619 [1976 and Supp. IV 1980]).

73. 392 U.S. 409 (1968).

74. 42 U.S.C. §§1981-1982 (1976 and Supp. IV 1980).

75. 392 U.S. at 422-37.

76. Housing and Urban Development Act of 1968, 12 U.S.C. §1715(1), §1715z-1 (1976).

77. 42 U.S.C. §3612 (1976).

78. 42 U.S.C. §3613 (1976).

79. 42 U.S.C. §3610 (1976).

80. Id.

81. 42 U.S.C. §3608(d)(1976 and Supp. II 1978).

82. 24 C.F.R. §570.601 (1982).

83. §1603 of the Housing and Urban Development Act of 1968.

84. §201(a) of the Housing and Urban Development Act of 1968, 12 U.S.C. §1715z-1 (1976).

85. §101(a) of the Housing and Urban Development Act of 1968, 12 U.S.C. §1715z(i)(1976).

87. 24 C.F.R. §§200.1-200.935 (1982).

88. 24 C.F.R. §200.625 (1982).

89. Unpublished material from the Center for National Policy Review, 1972.

90. 24 C.F.R. §200.710 (1982).

91. Id.

92. 37 F.R. 204 (1/7/72).

93. Id.

94. Homeownership for Lower Income Families, Report of the U. S. Commission on Civil Rights, 1971.

95. U. S. Department of Housing and Urban Development, Housing in the Seventies: A Report of the National Housing Policy Review 13 (Nov. 1974).

96. Pub. L. No. 560, ch. 649 §701, 68 Stat. 590, 640 (1954) (current version at 40 U.S.C. §461[a][1976]).

97. Areawide Housing Opportunity Plans, 24 C.F.R. §891.503 (1982).

98. Statement of the President on Federal Policies Relative to Equal Housing Opportunity, 9, June 11, 1971.

99. The New York Times, February 18, 1971.

100. U. S. Department of Housing and Urban Development, Housing in the Seventies: A Report of the National Housing Policy Review 2 (Nov. 1974).

101. Housing and Community Development Act of 1974, 42 U.S.C. §§5301-5320 (1976 and Supp. IV 1980).

102. §602 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d-1 (1976).

103. 42 U.S.C. §§5301-5320 (1976 and Supp. IV 1980).

104. §104 of the Housing and Community Development Act of 1974, 42 U.S.C. §5304 (1976 and Supp. IV 1980).

105. Id.

106. 42 U.S.C. §5304(a)(4)(A)(1976 and Supp. IV 1980).

107. U.S. Commission on Civil Rights, Federal Installations and Equal Housing Opportunity, March, 1970; Civil Rights Act of 1964, Title VII 42 U.S.C. §2000e (1964).

108. U.S. Commission on Civil Rights, Federal Installations and Equal Housing Opportunity, March, 1970, at 14.

109. See *supra* note a.

110. Memorandum to William H. Brown, III, Chairman, from Stanley P. Hebert, General Counsel; John de J. Pemberton, Jr., Deputy General Counsel; Martin I. Slate, Attorney, Employment Discrimination by Relocation of Plan and Corporate Headquarters, July 7, 1971, at p. 2.

111 *Id*. at p. 13.

112. 24 C.F.R. §570.601(b)(3)(1982).

113. 42 U.S.C. §5309(a)(1976); 42 U.S.C. §5311(a)(1976).

114. HUD Reports on Conditions for FHEO FY 1978, 1979, 1980 Unpublished.

115. 34 C.F.R. §270 (1981).

116. Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. §1607.1 (1982).

117. *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971); *Green* v. *County School Board*, 391 U.S. 430 (1968); *U.S.* v. *Jefferson County Board of Education*, 372 F.2d 836 (5th Cir. 1966), *aff'd en banc*, 380 F.2d 385, *cert. denied*, 389 U.S. 840 (1967).

118. Section 810(c) of the Civil Rights Act of 1968, 42 U.S.C. §3610(c)(1976).

119. Section 812(a) of the Civil Rights Act of 1968, 42 U.S.C. §3612(a)(1976).

120. *Warren* v. *Norman Realty Co.*, 375 F.Supp. 478 (1974); *aff'd* 513 F.2d 730 (1975); *Warren* v. *Perrino*, 585 F.2d 171 (1978).

121. Equal Opportunity in Housing, para. 19,501, para. 19,502, (P-H)(1971).

122. *See supra* note 82.

123. Fair Housing Amendments Act of 1979: Hearings on H.R. 2540 before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 96th Cong., 1st Sess. 3 (1979) (Statements of Drew S. Days, III, Assistant Attorney General, Civil Rights Division, Department of Justice).

124. *City of Lackawanna*, 318 F.Supp. 669 (W.D. N.Y.), *aff'd* 436 F.2d 108 (2d Cir. 1970), *cert. denied* 401 U.S. 1010 (1971).

125. See, e.g., *Williams v. Matthews Co.*, 499 Fed 819 (8th Cir. 1974)

126. *Hills* v. *Gautreaux*, 425 U.S. 284 (1976); *U. S.* v. *West Peachtree Tenth Corp.*, 437 F.2d 211 (5th Cir. 1971); *U. S.* v. *City of Parma*, 494 F.Supp. 1049 (N.D. Ohio 1980), *aff'd in part* 661 F.2d 562 (6th Cir. 1981).

127. *Supra note* 112.

128. *U. S.* v. *Yonkers Board of Education*, 518 F.Supp. 191 (S.D. N.Y. 1981).

129. See Farley, Richards and Wurdock, Sociology of Education, 1980.

130. Pearce, Breaking Down Barriers, November, 1980. The power of this effect is illustrated by the experience of Riverside, Calif. After fifteen years of busing students for desegregation, only three school still require students to be brought in in order to achieve a racially mixed student body; the other fourteen have sufficiently integrated neighborhoods that they have converted back to walk-in schools but are racially balanced.

131. Section 812(c) of the Civil Rights Act of 1968, 42 U.S.C. §3612 (c)(1976).

132. *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972).

133. Section 804(a) of the Civil Rights Act of 1968, 42 U.S.C. §3604(a)(1976).

134. *Dunn* v. *Midwestern Indemnity Co.*, 472 F.Supp. 1106 (1979); *Harrison* v. *Heinzeroth Mortgage Co.*, 430 F.Supp. 893 (1977); *Laufman* v. *Oakley Building and Loan Co.*, 408 F.Supp. 489 (1976).

135. *Metropolitan Housing Development Corp.* v. *Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977), *cert. denied* 434 U.S. 1025 (1978); *U. S.* v. *City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied* 422 U.S. 1042 (1975).

136. *Robinson* v. *Twelve Lofts Realty, Inc.*, 610 F.2d 1032, 1038 (2d Cir. 1979); *Resident Advisory Board* v. *Rizzo*, 564 F.2d 126, 146-48 (3d Cir. 1977), *cert. denied* 435 U.S. 908 (1978); *Metropolitan Housing Development Corp.* v. *Village of Arlington Heights*, 558 F.2d 1283, 1287-90 (7th Cir. 1977), *cert. denied* 434 U.S. 1025 (1978); *U. S.* v. *City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied* 422 U.S. 1042 (1975).

137. Section 813(a) of the Civil Rights Act of 1968, 42 U.S.C. §3613 (1976).

138. See Bill to Amend Title VIII of the Act Commonly Called the Civil Rights Act of 1968: Hearings on S. 506 Before the Subcommittee on the Constitution of the Senate Committee on the Judiciary, 96th Cong., 1st Sess. 21 (1979)(Statement of Patricia R. Harris, Secretary, HUD); id. at 64 (Statement of Drew S. Days, III, Assistant Attorney General, Civil Rights Division, Department of Justice).

139. Fair Housing Amendments Act of 1980, H.R. 5200, 96th Cong., 2d Sess., 126 Cong. Rec. H4783 (June 11, 1980).

140. On Dec. 9, 1980, by a vote of 54-43, proponents of the bill failed to secure cloture.

141. The New York Times, April 7, 1976.

142. Id., April 9, 1976.

143. See Taylor, "President Carter's Urban Policy: A Critique", 3 Urban League Review, #2 (Winter 1978).

144. Letter from Reynolds Farley to Gary Orfield, reporting calculations made by David Goldberg and other colleagues at the University of Michigan Population Studies Center, September 15, 1981.

145. See Appendix, Taeuber, Racial Residential Segregation, 1980.

146. Building the American City, Report of National Commission on Urban Problems, 51, 1968.

147. Reynolds Farley, Residential Segregation and its Implications for School Integration", XXXIX Law and Contemporary Problems 164, 175-176 (Winter 1975).

148. N. Y. Times, February 28, 1983.

149. John M. Yinger, "Prejudice and Discrimination in the Urban Housing Market" in Current Issues in Urban Economics, ed. P. Mieszkowski and M. Straszheim (Johns Hopkins University, Baltimore, Maryland)(1979).

150. U. S. Department of Housing and Urban Development, "Measuring Racial Discrimination in American Housing Markets" in The Housing Market Practices Survey, Washington, D. C., U. S. Government Printing Office (1979).

151. U. S. Department of Housing and Urban Development, Discrimination Against Chicanos in the Dallas Housing Market (Washington, D. C., U. S. Government Printing Office)(1979).

152. Judith B. Feins, Rachel G. Bratt and Robert Hollister, "Final Report of a Study of Racial Discrimination in the Boston Housing Market", ABT Associates (Cambridge, Massachusetts)(November 1981).

153. Letter from Glenda G. Sloane, Chairwoman, Housing Task Force, Leadership Conference on Civil Rights to Secretary Samuel Pierce, Jr., Department of Housing and Urban Development 3 (May 28, 1981).

154. Meeting of Leadership Conference on Civil Rights, July 6, 1981 with HUD General Counsel John Knapp.

155. Executive Order No. 12310, 46 Fed. Reg. 31,869 (1981).

156 The Report of the President's Commission on Housing, at 3 (1982) (hereinafter referred to as "1982 Housing Report").

157. U. S. Department of Commerce, Bureau of the Census and the U. S. Department of Housing and Urban Development, Office of Policy Development and Research, Annual Housing Survey, 1977 (Washington, D. C.: U. S. Government Printing Office, 1979).

158. The unavailability of habitable housing which would house poor families but for their inability to pay is recognized as a concern but not discussed: "The Commission is particularly concerned about local housing markets where shortages may inhibit the effective working of a housing assistance program." 1982 Housing Report at 9.

159. Figures were compiled by AFL-CIO from U. S. Department of Commerce, Bureau of the Census information and Advance Mortgage Corporation data.

160. Statement of Secretary Samuel R. Pierce, Jr., HUD, before the Subcommittee in Housing & Community Development of the House Committee on Banking, Finance & Urban Affairs, March 1, 1983 at p. 2.

161. For a discussion of the demand for owned homes and rental units and its relationship to the "trickle down" theory, see generally 1982 Housing Report at 69.

162. Joint Center for Political Studies, Urban Policy Issues 11 (prepared under cooperative agreement #6650, U. S. Department of Housing and Urban Development.)

163. Id. at 1.

164. These statistics are estimates by the National Low Income Housing Coalition analysis of "The Housing Budget and Low Income Housing Needs" 3 (March 1982).

165. Id. at 4.

166. Id. at 5.

167. Gary Orfield, "The Racial Impacts of the Reagan Administration Housing Policies", 4 (April 29, 1982).

168. 1982 Housing Report at 18.

169. Fiscal Year 1984 Administration Budget.

170. While the Commission does acknowledge this problem and recommends strong enforcement of fair housing laws and a "substantial local support services component for open housing", it has no suggestions for how it will be implemented or funded or who will be responsible for assuring that the service will be provided.

171. R. Struyk and M. Bendick, Housing Vouchers for the Poor: Lessons from a National Experiment 14 (Urban Institute 1981).

172. Id. at 12.

173. Id.

174. See supra note aa at p. 3.

175. 1982 Housing Report at 27-28.

176. Id. at 28, note 8.

177. S. Rep. No. 463, 97th Cong., 2d Sess at 29.

178. Amendments to Community Development Block Grants Program, 47 Fed. Reg. 43,900 (1982)(to be codified at 24 C.F.R. pt. 51).

179. Housing and Community Development Amendments of 1981, Pub. L. No. 97-35, 95 Stat. 384-431 (codified at scattered sections of 12 U.S.C., 40 U.S.C. and 42 U.S.C.

180. 47 Fed. Reg. at 43,912 (1982).

181. Id. at 43,913. See information regarding standards for determining "elimination or prevention of slums and blight" and "urgent needs." Under the proposed rules, localities, rather than HUD, would make crucial determinations regarding use of federal funds.

182. Id. at 43,906. The proposed certification is general, "rather than including an extensive list of cross-cutting statutory and other requirements in the certifications." The recipient need only certify general compliance with "applicable" statutes.

183. Pending a Department of Justice opinion, HUD will continue to apply it to HCD activities.

184. 24 C.F.R. 570.601 (1982).

185. See supra note aa at p. 3.

186. 24 C.F.R. §570.306(e)(2)(1982).

187. Office of Management and Budget Circular A-95, July 24, 1969, *rev'd* Feb. 9, 1971 *as amended* by Transmittal Memorandum No. 1, Dec, 27, 1969, *as amended* by Transmittal Memorandum No. 2, March 8, 1972; terminated by Exec. Order 12372, 47 Fed. Reg. 137 (1980).

188. Community Development Block Grants: State's Program (Small Cities Regulations), 24 C.F.R. pt. 570 (1982).

189. *South Burlington City NAACP* v. *Mt. Laurel* ("Mt. Laurel II") (Supreme Ct. of N. J. 1983) Nos. A-35/36, A-172, A-4, A-7/21, A-8, A-18 and A-37) decided Jan. 21, 1983, P-H EOH para. 16,654.

190. Amended Memorandum of Understanding to the Voluntary Affirmative Marketing Agreement, September 20, 1981 (unpublished)

191. *Id.* at para. IA.

192. *Id.*, para. V,D#6.

193. *Id.*

194. *Havens Realty Corp.* v. *Coleman*, 102 S.Ct. 1114 (1982).

195. Fiscal Year 1984 Budget, January 31, 1983.

196. Memorandum from Antonio Monroig, Assistant Secretary for Fair Housing and Equal Opportunity to HUD Area Offices entitled "Realtor Representation on Community Housing Resource Boards," Nov. 19, 1982.

197. 44 U.S.C. §3501 *et seq.* (1980).

198. Federal Reports Act of 1942, 44 U.S.C. §3501-3511; §104 of the Act, Sept. 12, 1980 (31 U.S.C. §18(a); §7 Federal Records Act of 1950 (codified in 44 U.S.C. §3102); Standard Form 83, Rev. 6-76 prescribed by OMB Circular A-40.

199. Certification/Recertification of Tenant Eligibility Form - HUD 50059 (7-82) OMB No. 2502-0204.

200. *National Urban League* v. *Office of the Comptroller of the Currency*, Equal Opportunity in Housing, para. 18,049 (P-H)(D.C. D.C. 1977).

201. 12 C.F.R. §528.6 (1982).

202. 12 C.F.R. §§303, 304, 347 (1982).

203. 42 U.S.C. §§5301, 340(e) (1980).

204. 12 U.S.C. §2801 *et seq.* (1975).

205. 12 U.S.C. §2901 *et seq.* (1977).

206. *Zuch* v. *Hussey*, 366 F.Supp. 553 (E.D. Mich. 1973)

207. *U. S.* v. *Mintzes*, 304 F.Supp. 1305 (D. Md. 1969).

208. *U. S.* v. *West Peachtree Tenth Corp.*, 437 F.2d 221 (5th Cir. 1971).

209. *Laufman* v. *Oakley Bldg. & Loan Co.*, 408 F.Supp. 489 (S.D. Ohio 1976).

210. *U. S.* v. *American Institute of Real Estate Appraisers*, 442 F.Supp. 1072 (N.D. Ill. 1977) *appeal dismissed* 590 F.2d 242 (7th Cir. 1978).

211. *U. S.* v. *City of Parma*, 494 F.Supp. 1049 (N.D. Ohio 1980) *aff'd in part* 661 F.2d 562 (6th Cir. 1981).

212. *U. S.* v. *Hartman & Tyner, Inc.*, (D.C. E.D. Mich.) No. 82-60194, Consent Order, Dec. 21, 1982; *U. S.* v. *Commonwealth Avenue Associates* (D.C. Mass.) No. 82-302-MA, Consent Order, July 28, 1982.

213. Government Complaint, *U. S.* v. *Chicago Park District* (D.C. N.D. Ill.)(Jan. 21, 1983).

214. Civil Rights Division, Department of Justice, *Correcting the Record of Civil Rights Enforcement--A Response to the Report of the Washington Council of Lawyers* (Nov. 1982)(hereinafter "1982 DOJ Report")

215. *Id.* at 22.

216. *National Law Journal*, Nov. 9, 1981 at 3.

217. 1982 DOJ Report.

218. Letter to Professor D. Bruce LaPierre from William Bradford Reynolds February 18, 1983 at. p. 2.

219. *Supra* note 171.

220. *Id.*

221. *U. S.* v. *Birmingham*, 538 F.Supp. 819 (D.C. E.D.Mich. 1982).

222. National Law Journal, Aug. 9, 1981 at 12.

223. Letter from William Bradford Reynolds, Assistant Attorney General, Department of Justice, to John Knapp, General Counsel, HUD, March 4, 1983.

224. *Metropolitan Housing Development Corp.* v. *Village of Arlington Heights*, 558 F.2d 1283 at 1290 (7th Cir. 1977) *cert. denied* 434 U.S. 1025 (1978).

225. *Id.*

226. U. S. v. Yonkers Board of Education, 518 F.Supp. 191 (S.D. N.Y. 1981).

227. Fiscal Year Budget, January 31, 1983 at FHEO-3,4.

228. Id.

229. Id.

230. Id. at FHEO-4.

231. Id.

232. Id., Administrative Expenses at S&E 2,3.

233. Ibid. at H45.

234. Fiscal Year Budget, January 31, 1982, H45.

235. Fiscal Year Budget at ST5.

236. Id. at H45.

237. Gautreaux, et al. v. Landrieu, 498 F.Supp. 1072 (D.C. N.D. Ill. 1980).

238. Supra note 64.

APPENDIX

RACIAL RESIDENTIAL SEGREGATION, 1980 [1]

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March, 1983

Racial residential segregation persists at high levels in all American cities that have sizable black populations. The 28 cities with a 1980 black population greater than 100,000 were home for 9.7 million blacks, more than one-third of the nation's total. The average segregation index score calculated from 1980 census data for these 28 cities was 81. The segregation index (technically the index of dissimilarity) ranges from 100 when every city block is either 100% black or 0% black, to zero when every city block has the same ratio of blacks to total as the entire city. Segregation indices and other measures for the 28 cities are listed in Table 1.

Two of these cities have segregation indices above 90: Chicago (92) and Cleveland (91). Fifteen cities have indices in the 80s and 9 cities have indices in the 70s. Two have lower indices: Gary (68) and Oakland (59).

Size of black population is no predictor of how segregated a city is. New York City, with a black population of 1.8 million, is 24th on the list with an index of 75. Chicago, with a black population of 1.2 million, tops the list with an index of 92. Other cities with more than one-half million black population in 1980 are Detroit (759,000 blacks; index of 73), Philadelphia (639,000; 88), and Los Angeles (505,000; 81).

Neither is black percentage a predictor of the level of residential segregation. Among cities with a black majority, Atlanta (67% black; index of 86) and Baltimore (55% black; also 86) have the fifth and sixth highest segregation indices, whereas Detroit (63% black; 73) and Gary (71% black; 68) are 26th and 27th among the 28 cities.

Although all 28 cities are racially segregated, there is variation among the cities in some of the manifestations of segregation. Extreme racial separation is indicated by complete racial homogeneity among residents of individual city blocks. Birmingham tops this list with 46% of its blacks living in blocks occupied solely by blacks. Other cities above 30% on this measure are Jacksonville, Memphis, and Richmond. In eight cities, fewer than 10% of blacks live in racially homogeneous blocks; New York is at the bottom of the list with only 1.5%.

Among nonblacks, living in racially homogenous blocks is typically more common. Cleveland and St. Louis top the list with 67% living in blocks with no black residents. The percentage drops below 10 in only two cities, Washington and Oakland. The definition of racial homogeneity used for these data--100% black or 100% nonblack--is quite stringent. If the definition were eased, so that blocks with fewer than 5% of the other race were still regarded as homogeneous, the percentages of blacks and nonblacks living in racially homogeneous blocks would be much higher than those cited.

Racial "exposure" measures are another indicator of racial separation in American cities. If we suppose that the city block on which a person lives constitutes his home neighborhood, we may ask to what extent are blacks exposed to nonblack residents in their home neighborhoods? Under complete segregation, exposure of blacks to nonblacks would be zero. Under complete integration, each black would be exposed to the city proportion of nonblacks. The "exposure index" is the average percentage nonblack for black residents. Among the 28 cities, the exposure of blacks to nonblacks ranges from 31% (Columbus) to 7% (Atlanta). Other cities with an index below 10% are Baltimore, Birmingham, Chicago, Cleveland, St. Louis, and Washington. In all of these cities, there are enough nonblacks that the index would be 30% or higher if there were complete residential integration.

There is a corresponding exposure index to measure the exposure of nonblacks to blacks. It is the average percentage of blacks on the block, calculated for nonblack residents. Among the 28 cities, the exposure of nonblacks to blacks ranges from 34% (Gary) to 5% (Chicago). Fifteen cities have an index below 10%, while only four have an index above 20%.

Previous studies of the trend in racial residential segregation have described changes during the period 1940 to 1970.[2] During the 1940s, segregation indices persisted at high levels in northern cities and typically increased in southern cities. During the 1950s, residential segregation in southern cities continued to intensify, while many northern cities experienced small declines. During the 1960s, small reductions in segregation were common among cities in all regions.

Knowledgable observers have different opinions about the trend in residential segregation during the 1970s. Some expected the 1980 segregation indices to reveal increases since 1970. This anticipation was based on the obvious maintenance of central city black populations, rapid white population departure from central cities to suburbs, the continuation of institutional forces that promote and maintain racial segregation in housing, the persistence of racial prejudice, and the low political and financial priority put on fair housing efforts.

Other students of residential segregation expected the data to reveal that the 1970s had brought sharper declines than prevailed during the 1960s. Attitude surveys suggested declining levels of racial prejudice. The 1968 federal fair housing law and the Supreme Court decision in the same year declaring all housing discrimination illegal provided new legal recourse. These, together with many state and local fair housing laws and organizations, seemed during the 1970s to be having some influence in opening up the suburbs and reducing white panic selling in racially mixed neighborhoods. The 1970s also witnessed a sharp decline in rates of black population growth in most cities, thus reducing the pent-up demand for housing and slowing the traditional rapid racial transition in areas newly opened up to blacks.

Neither expectation was fully borne out. In 1970, the average segregation index for the 28 cities was 87. The decline to 81 in 1980 continues the trend that was apparent in the 1960s, but without much acceleration. The pattern of decline in both decades may be characterized as a slow downward drift. Declines of 6 points a decade for the next 50 years would still leave the average city with an index above 50.

The trend data for 1970 to 1980 demonstrate the possibility of rapid declines. Eight of the 28 cities had declines of more than 10 points. Dallas, Jacksonville, Houston, Nashville, and Richmond all were above 90 in 1970 and declined more than 10 points. Columbus (Ohio), Gary, and Oakland also declined more than 10 points, even though their 1970 scores were already below average. Research should be directed to discerning what accounts for these large declines, and why 7 other cities failed to decline by more than 2 points.

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The data presented are based on 1980 census final population counts classified by race, as released on the P.L. 94-171 computer tape files. Census data are imperfect; no adjustments have been made for undercount or other errors. Racial identification is based on self-designation; the reported categories are here collapsed into black and nonblack. Nonblack includes various "races" tallied for census purposes, such as Chinese, Vietnamese, and Native Americans, as well as those recorded as white. In most of the 28 cities, nearly all "nonblacks" are "whites." In a few, such as Oakland and Los Angeles, many nonblacks are members of other nonwhite "races." This preliminary analysis also overlooks other ethnic identities which should be included in a more comprehensive assessment of segregation. In particular, persons identified by the census as of Spanish origin are here included mainly in the nonblack category. Another limitation of the analysis reported here is the restriction to cities.

Many of the dynamics of residential segregation have to do with racial and ethnic patterns of suburbanization. This analysis considers only the patterns of segregation among those blacks and nonblacks who at the time of the census resided in the central city (except for Nashville, which in 1980 census reports is merged with Davidson County). Future reports from this research project will take account of these racial, ethnic, and geographic complexities.

[2] Sorensen, A., K. Taeuber, and L. Hollingsworth, Jr., "Indexes of Racial Residential Segregation for 109 Cities in the United States, 1940 to 1970," Sociological Focus 8 (April, 1975): 125-142; Taeuber, K., and A. Taeuber, Negroes in Cities (Chicago: Aldine, 1965).

Table 1. Measures of Residential Segregation for Cities with Black Population of More than 100,000 in 1980[1]

City	Population (in thousands)		Percent Black	Segregation Index (Dissimilarity)		% Living in Homogeneous Blocks		Exposure Index	
	Total	Black		1980	1970	Blacks	Nonblacks	Blacks to Nonblacks	Nonblacks to Blacks
New York, NY	7,071	1,784	25	75	77	1	31	30	10
Chicago, IL	3,005	1,197	40	92	93	20	59	8	5
Detroit, MI	1,203	759	63	73	82	12	28	14	24
Philadelphia, PA	1,688	639	38	88	84	14	64	12	8
Los Angeles, CA	2,967	505	17	81	90	4	33	29	6
Washington, DC	638	448	70	79	79	12	10	9	22
Houston, TX	1,594	440	28	81	93	25	43	20	8
Baltimore, MD	787	431	55	86	89	21	47	10	12
New Orleans, LA	557	308	55	76	84	25	32	15	19
Memphis, TN	646	308	48	85	92	35	47	12	11
Atlanta, GA	425	283	67	86	92	28	32	7	14
Dallas, TX	904	266	29	83	96	25	48	18	7
Cleveland, OH	574	251	44	91	90	18	67	8	6
St. Louis, MO	453	206	46	90	90	22	67	8	7
Newark, NJ	392	192	58	76	76	9	18	14	20
Oakland, CA	339	159	47	59	70	2	7	30	27
Birmingham, AL	284	158	56	85	92	46	51	10	12
Indianapolis, IN	701	153	22	83	90	17	56	22	6
Milwaukee, WI	636	147	23	80	88	6	50	25	7
Jacksonville, FL	541	137	25	82	94	41	46	19	6
Cincinnati, OH	385	130	34	79	84	7	34	21	11
Boston, MA	563	126	22	80	84	3	43	27	8
Columbus, OH	565	125	22	75	86	7	32	31	9
Kansas City, MO	448	123	27	86	90	18	55	17	6
Richmond, VA	219	112	51	79	91	32	31	15	15
Gary, IN	152	108	71	68	84	29	19	14	34
Nashville, TN[2]	456	106	23	80	90	17	40	24	7
Pittsburgh, PA	424	102	24	83	86	13	52	20	6

[1] Segregation measures are based on the census count of black and nonblack persons in each city block.

[2] Census data for Nashville in 1980 include all of Davidson County.